



TEXAS LOTTERY COMMISSION

REQUEST FOR PROPOSALS

FOR

AUDIT SERVICES

ISSUED October 14, 2009 4:00 P.M. Central Time
Request for Proposal No. 362-10-0081



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GLOSSARY OF TERMS

This Glossary assigns definitions to the listed terms. The definition given to a term listed in this Glossary applies whenever the term appears in this Request for Proposals (RFP) and in any response, including a Proposal, to this Request for Proposals.

Apparent Successful Proposer – The Proposer recommended by the evaluation committee and approved by the Executive Director, subject to the execution of a completed contract.

Audited Financial Statements – Includes Independent Auditors' Report, Independent Auditors' Report on Compliance and on Internal Control over Financial Reporting, accompanied by Government-wide Financial Statements, Fund Financial Statements (Governmental and Proprietary), Statement of Cash Flows (Proprietary Funds), all required disclosures, Required Supplementary Information (i.e., Reconciliation of Budgetary Accounting to GAAP), any Combining Statements.

Contract - The agreement entered into by the Texas Lottery and the Successful Proposer, which will incorporate the contents of this RFP and the Successful Proposer's Proposal, except as specifically provided to the contrary in the Contract and any amendments to the Contract.

Contract Award - The signing of a Contract between the Texas Lottery and the Successful Proposer.

Day - A calendar day.

Executive Director - The Executive Director of the Texas Lottery Commission or an employee of the Texas Lottery Commission authorized to act on behalf of the Executive Director.

Fiscal Year – The Texas Lottery's fiscal year, which begins on September 1 and ends on August 31 of the following year.

Historically Underutilized Business (HUB) - A business based in the State of Texas and formed for the purpose of making a profit, which is at least 51 percent owned, operated, and controlled by one or more HUB group members (see Attachment C).



HSP - The Historically Underutilized Business (HUB) Subcontracting Plan (HSP) required by Chapter 2161 of the Texas Government Code and by Texas Lottery Commission Rule, 16 Texas Administrative Code § 403.301 (see Attachment C).

Intellectual Property Rights - The worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

Prime Contract - The following contracts which the Texas Lottery has entered into or may enter into in the future are considered prime contracts: lottery operator, instant ticket vending machine supplier, instant ticket manufacturer, random animated digital drawing system, advertising services, lottery drawings audit services, drawings broadcast services, instant ticket testing services, annual financial audit and Mega Millions agreed-upon engagement procedures, lottery security study services, outside counsel for intellectual property matters, statistical consulting services, outside counsel for lottery operations and services procurement, and surveillance camera products and related services. The Texas Lottery may, at its sole option, add or delete contracts that are considered prime contracts.

Proposal - All information and materials submitted by a Proposer in response to this RFP.

Proposer – An individual or entity that submits a Proposal. The term includes anyone acting on behalf of the individual or entity that submits a Proposal, such as agents, employees and representatives.

RFP – This Request for Proposals.



Responsive Proposal – A Proposal submitted which conforms in all material respects to the RFP.

State - The State of Texas and its agencies, boards and commissions, officers and employees.

Subcontractor - Any person other than an employee of the Successful Proposer who provides goods or performs any of the services specified in this RFP for compensation.

Successful Proposer - The Proposer with whom the Texas Lottery executes a Contract to provide the goods and services required in this RFP.

TPASS – Texas Procurement and Support Services. TPASS is a division of the Texas Comptroller of Public Accounts.

Texas Lottery Commission, Texas Lottery, Lottery or TLC - That agency created by Chapters 466 and 467, Texas Government Code. The Texas Lottery Commission may be referred to as the Texas Lottery, Lottery or TLC throughout this document.

Working Days - Business days occurring Monday through Friday except for the legal holidays observed by the State of Texas. The terms “working days” and “business days” may be used interchangeably.

Works - Any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by the Successful Proposer (or such third parties as the Successful Proposer may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of TLC under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to lottery games, game names, game designs, ticket format and layout, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text Web pages or



Web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to TLC under the Contract, and (viii) all Intellectual Property Rights in any of the foregoing.



PART 1

GENERAL INFORMATION

1.1 Purpose

- 1.1.1 The Texas Lottery Commission is issuing this Request for Proposal (RFP) to invite qualified Proposers to submit proposals to enter into an agreement with the Texas Lottery for the performance of the Annual Financial Audit and Mega Millions Agreed-Upon Procedures Engagement.
- 1.1.2 Only Proposers that are Texas State Board of Public Accountancy certified public accounting (CPA) firms or individuals will be considered.
- 1.1.3 Proposers responding to this RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that provides the best value to the Texas Lottery. Proposers must propose on all components and submit a single proposal for all services in response to this RFP.

1.2 Our Core Values

- 1.2.1 *Integrity and Responsibility* — The Texas Lottery Commission works hard to maintain the public trust by protecting and ensuring the security of our lottery games, systems, drawings and operational facilities. We value and require ethical behavior by our employees, licensees and vendors. We promote the integrity of charitable bingo in Texas for the benefit of charitable organizations.
- 1.2.2 *Innovation* — We strive to incorporate innovation into our products to provide the citizens of Texas with the best entertainment experience available through our products. We pursue the use of technology that enhances the services that we provide to our customers and reduces our operating expenses.
- 1.2.3 *Fiscal Accountability* — We emphasize fiscal accountability by ensuring that all expenditures directly or indirectly generate revenue, enhance security, fulfill regulatory requirements, improve customer service and/or boost productivity. We recognize our responsibility in generating revenue for the State of Texas without unduly influencing



players to participate in our games. We maximize benefits to charities through the continual examination and review of charitable bingo operations.

- 1.2.4 *Customer Responsiveness* — The Texas Lottery Commission takes pride in providing exemplary service to the people of Texas through the courteous dissemination of clear and accurate information about our products, services and regulatory functions. We seek and respond to feedback expressed by our employees, retailers, licensees and the playing and non-playing public. We apply this feedback in the development of our products and in the services that we provide.
- 1.2.5 *Teamwork* — We are committed to creating an environment of mutual respect where open, honest communication is our cornerstone. We embrace the diversity of our team and individual perspectives in working together to achieve our common goals.
- 1.2.6 *Excellence* — We strive for excellence by taking a position of leadership on issues that impact the Texas Lottery Commission and achieve challenging goals by focusing on our core values.

1.3 Schedule of Events

The following time periods are set forth for informational and planning purposes only. The Texas Lottery reserves the right to change any of the time periods and will post all changes on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/> and the Texas Lottery web site, <http://www.txlottery.org/> (Click on About Us, Doing Business with TLC, Procurement).



DATE	EVENT
October 14, 2009 (4:00 p.m., CENTRAL TIME)	Issuance of RFP
October 27, 2009 (3:00 p.m., CENTRAL TIME)	Pre-Proposal Conference at Texas Lottery Headquarters
November 6, 2009 (4:00 p.m., CENTRAL TIME) (Late Questions will not be answered).	Written Questions Due
November 17, 2009	Responses to Written Questions Issued
December 11, 2009 (4:00 p.m., CENTRAL TIME) (Late Proposals will not be considered.)	Deadline for Proposals
January 22, 2010 on or before (or as soon as possible thereafter)	Announcement of Apparent Successful Proposer

1.4 Successful Proposer's/Lottery Relationship

The Successful Proposer will function under the supervision of the Texas Lottery and shall operate in a manner that will not cause any embarrassment to the Texas Lottery and the State of Texas. The Lottery is a publicly owned and managed institution. Although the Successful Proposer comes from the private sector, its operations will be subject to the same scrutiny and oversight that would exist if all operations were performed by Texas Lottery employees. All operations shall be conducted in adherence to the highest ethical standards.

1.5 Procurement Authority

This Request for Proposals and all activities leading toward the execution of a written Contract pursuant to this RFP are being conducted in accordance with the State Lottery Act (TEX. GOV'T CODE § 466.001 et seq.), as amended; the Texas Lottery's administrative regulations (16 TEX. ADMIN. CODE § 401.101 et seq.); and the applicable laws of the State of Texas. All prospective Proposers should read and be familiar with the State Lottery Act and 16 TAC §401.101.



1.6 Proposals Subject to Texas Public Information Act

- 1.6.1 The Texas Lottery is subject to the Texas Public Information Act (Act) (TEX. GOV'T CODE Ch. 552). Proposals submitted to the Texas Lottery in response to this RFP are subject to release by the Texas Lottery as public information unless the Proposal or specific parts thereof can be shown to fall within one or more of the exceptions to disclosure provided in the Act, the State Lottery Act or other applicable law. If a prospective Proposer believes that its Proposal, or parts of it, is confidential under the Act, it must specify the confidential portions by marking "Confidential" on each page or by each paragraph containing such information. The Proposer further must specify which exception(s) it believes applies for each portion. In response to this section, Proposers shall provide specific and detailed reasons for each section marked "Confidential". Vague and general claims to confidentiality are not acceptable. This is necessary so that the Texas Lottery will have sufficient information to provide the Attorney General of Texas if an opinion regarding the confidentiality of such information is requested. The Attorney General has previously ruled that the statutory exception in Section 552.104 of the Act (Exception: Information Related to Competition or Bidding) generally does not apply after a contract has been awarded. All Proposals or parts of Proposals that are not marked as being confidential may automatically be considered public information after a Contract has been awarded or the procurement has been terminated. Successful Proposals may be considered public information even though parts are marked "Confidential."
- 1.6.2 The Texas Lottery assumes no responsibility for asserting legal arguments for Proposers.
- 1.6.3 Prospective Proposers are advised to consult with their legal counsel concerning disclosure issues resulting from this Proposal process and to take precautions to safeguard trade secrets and other proprietary information.

1.7 Misunderstanding or Lack of Information

By submitting a response, a prospective Proposer covenants and agrees that it fully understands and will abide by the terms and conditions of the RFP and it will not make



any claims for, or have any rights to, cancellation or relief without penalty because of any misunderstanding or lack of information. The Executive Director reserves the right to accept Proposals by waiving minor technicalities therein if the Executive Director, within his or her sole discretion, determines it to be in the best interests of the Texas Lottery. The decision of the Executive Director shall be conclusive, subject to protest under Section 2.16 of this RFP.

1.8 Rejection of Proposals and Cancellation of RFP

Issuance of this RFP and/or retention of Proposals does not constitute a commitment on the part of the Texas Lottery to award a Contract. The Texas Lottery maintains the right to reject any or all Proposals and to cancel this RFP if the Executive Director considers it, in his or her sole discretion, to be in the best interests of the Texas Lottery to do so.

1.9 Ownership of Responses

All materials submitted by a prospective Proposer will become the property of the Texas Lottery and may be used as the Texas Lottery deems appropriate.

1.10 Incurred Expenses

The Texas Lottery accepts no obligations for costs incurred in preparing and submitting a Proposal. Proposals shall be submitted at the sole expense of the Proposer. All Proposals shall be prepared simply and economically, providing a straightforward, concise delineation of the prospective Proposer's capabilities to satisfy the requirements of this RFP.

1.11 No Texas Lottery Obligations

The Texas Lottery reserves the right to select qualified responses to this RFP without discussion of the responses with prospective Proposers. It is understood that all Proposals will become a part of the Texas Lottery's official procurement files and will be available for public inspection.



1.12 Successful Proposer's Obligations

The Successful Proposer shall always be responsible for the performance of any contractual obligations that may result from an award based on this RFP and shall be liable for the non-performance of any or all Subcontractors.

1.13 Captions

The captions to sections in this RFP are for convenience only and are not part of the RFP's substantive terms.

1.14 Survival

Provisions of this RFP which of their nature and effect are necessary to enable the Lottery to function normally and to meet all of its obligations shall survive any termination of any Contract. These provisions include, but are not limited to, all of the warranties and representations and any provision that by its terms provides for applicability beyond the Contract period.

1.15 Parts Incorporated

All attachments listed in the Table of Contents are incorporated into and expressly made a part of this RFP.



PART 2

PROPOSAL PROCESS

2.1 Contact Person

The sole point of contact for communications concerning this RFP will be Angela Zgabay-Zgarba, whose address and facsimile number are as follows:

Angela Zgabay-Zgarba
Contracts Administrator
Texas Lottery Commission
P. O. Box 16630
Austin, TX 78761-6630
Fax (512) 344-5444
e-mail: angela.zgarba@lottery.state.tx.us

The physical address for overnight, commercial and hand deliveries is:

Angela Zgabay-Zgarba
Contracts Administrator
Texas Lottery Commission
611 East 6th Street
Austin, TX 78701

2.2 Prohibition Against Unauthorized Contact

- 2.2.1 The Texas Lottery is committed to a proposal process that maintains the highest level of integrity. Accordingly, Proposers, as well as their agents, liaisons, advocates, lobbyists, “legislative consultants,” representatives or others promoting their position, are limited to those communications authorized by and described in this RFP. Any attempt to influence any of the participants, whether that attempt is oral or written, formal or informal, direct or indirect, outside of this RFP process is strictly prohibited.
- 2.2.2 Should allegations of improper contact be made prior to any Contract Award, the Executive Director may investigate those allegations and, in his or her sole discretion, disqualify a Proposer.



2.3 Pre-Proposal Conference

Prospective Proposers are encouraged to attend the pre-Proposal Conference to be held at the Texas Lottery headquarters (611 East 6th Street, Austin, Texas). See the Schedule of Events for the date and time.

2.4 Inquiries

2.4.1 Written inquiries concerning this RFP will be accepted by Angela Zgabay-Zgarba and responses posted on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/> and the Texas Lottery website, www.txlottery.org, according to the timetable established in the Schedule of Events. Inquiries received after the deadlines set in the Schedule of Events may be reviewed by the Texas Lottery, but will not be answered. Any addenda or amendments, whether made as a result of a prospective Proposer's written inquiries or otherwise, will be posted on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/> and the Texas Lottery web site, www.txlottery.org. **It is the responsibility of the Proposer to check these web sites for any additional information regarding this RFP.**

2.4.2 Inquiries shall be submitted by email and/or facsimile by the submission deadline. If there is any discrepancy between the electronic version and the printed version of a document, the printed version will control. The inquiries shall be emailed to:

angela.zgarba@lottery.state.tx.us

2.4.3 A Proposer shall inquire in writing and should obtain clarification as to any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in this RFP prior to submitting a Proposal, but in no event shall be entitled to additional compensation, relief or time by reason of any such error or its later correction. If a Proposer fails to notify the issuing office of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error, the Proposer shall submit a Proposal at its own risk; and, if awarded the Contract, the Successful Proposer shall have waived any claim



that the RFP and Contract were ambiguous and shall not contest the Texas Lottery's interpretation thereof.

2.5 Proposal Submission

- 2.5.1 Proposers are required to propose a complete solution to the Texas Lottery's requirements in their Proposal. Any items not specifically requested, but integral to the requested services, shall be included in the Proposal and identified in the appropriate sections.
- 2.5.2 Proposers responding to this RFP must fully and completely address all goods, services and requirements as described by this RFP. Incomplete or partial Proposals will not be considered. A Proposer shall provide all information that the Proposer believes would be helpful to the Texas Lottery in evaluating the Proposer's ability to perform the requirements.
- 2.5.3 Each Proposer shall submit one (1) signed original and ten (10) copies of its Proposal. All Proposals submitted must be bound in a three-ring binder, organized and arranged to correspond directly with the numbered sections of this RFP, and all pages must be numbered. Proposers shall provide a section-by-section response to the RFP. For parts 1, 2 and 3 only, Proposers may provide a blanket acknowledgment and acceptance in lieu of a section-by-section response. However, if a Proposer is claiming any confidentiality under Section 1.6, the Proposer must provide a response to Section 1.6. A Proposer may not amend a commitment to comply with a specific section of this RFP by a later reference back to that section. The cost proposal must be submitted in a separately sealed envelope per Section 2.10.
- 2.5.4 In addition to the printed Proposal, the Proposer must also submit one copy of the text portion of its Proposal, excluding the cost proposal, on compact disks compatible with Microsoft WORD for Office 2007 or a PDF file. If there is any disparity between the contents of the printed Proposal and the contents of the Proposal contained in electronic format, the contents of the printed Proposal shall take precedence. The electronic or soft



copy provided herein will not be accepted in lieu of the signed original and copies as required in Section 2.5.3.

- 2.5.5 Proposals that have been copyrighted by any Proposer are unacceptable and will be rejected as non-responsive.

Failure to comply with the requirements in this Section 2.5 may result in disqualification.

2.6 Response Format & Contents

Each Proposal must be organized in the manner described below:

- (a) Letter of Transmittal
- (b) Executive Summary
- (c) Section by section response to the RFP (with the exception of Parts 1, 2 and 3 - see Section 2.5.3)
- (d) Sealed Cost Proposal (Attachment to original proposal only).

2.7 Letter of Transmittal

- 2.7.1 Proposers must submit a Letter of Transmittal that identifies the entity submitting the Proposal and includes a commitment by that entity to provide the goods and services required by the Texas Lottery in this RFP. The Letter must state that the Proposal is valid for one hundred eighty (180) Days from the day after the date that the Proposals are delivered to the Texas Lottery. Any Proposal containing a term of less than one hundred eighty (180) Days for acceptance shall be rejected. The Letter must be signed by a person(s) legally authorized to bind the Proposer to the representations in the Proposal. In the case of a joint Proposal, each party must sign the Letter of Transmittal. Each Proposer should also indicate, in its Letter of Transmittal, why it believes it is the most qualified Proposer to provide the services required by the Texas Lottery in this RFP.
- 2.7.2 The Letter of Transmittal must include a statement of acceptance of the terms and conditions of the Contract resulting from this RFP, as specified in Part 3. If any Proposer takes exception to any of the proposed terms and conditions, those exceptions must be



noted in the Letter of Transmittal. Each Proposer should realize, however, that failure to accept the terms and conditions specified in Part 3 may result in disqualification.

2.8 Executive Summary

2.8.1 Proposers must provide an Executive Summary of the Proposal (excluding cost information) that asserts that the Proposer is providing, in its Proposal, all the requirements of this RFP. If the Proposer is proposing to provide goods or services in addition to those specifically requested, those goods or services must be identified in the Executive Summary. If the Proposer is offering goods or services that do not meet the specific requirements of this RFP, but in the opinion of the Proposer are equivalent or superior to those specifically requested, any such differences must be noted in the Executive Summary. Each Proposer should realize, however, that failure to provide the goods and services specifically required may result in disqualification.

2.8.2 The Proposer must demonstrate its understanding of the requested goods and services and must address specifically, in writing, the Proposer's approach to providing each requirement in this RFP.

2.8.3 The Executive Summary shall not exceed five (5) pages and should represent a full and concise summary of the contents of the Proposal.

2.9 Proposer's Contracting Authority

Each Proposer warrants and represents that the person named on the Proposer's Commitment (Attachment A) has the full right, power and authority to execute a Contract on behalf of the Proposer.

2.10 Proposer's Cost Proposal

2.10.1 Each Proposer must state its pricing for all goods and services to be provided during the course of this project, including any and all costs involved that are to be paid or reimbursed by the Texas Lottery. The pricing for the required goods and services is to be presented only in the format set forth in Attachment H of the RFP. Pricing information



shall include all costs associated with providing the required goods and services and must be submitted in a separate, sealed envelope clearly marked as such, attached to the original Proposal only. No reimbursement is available to the Proposer beyond the amount agreed to be paid for the goods and services provided. Costs agreed to in the resulting Contract shall be firm and remain constant through the life of the Contract.

- 2.10.2 The Proposer shall not disclose its cost proposal or other cost information in the body of the written Proposal. Including cost information in the written Proposal may be cause for disqualification.

2.11 Multiple Proposals

Each Proposer may submit only one Proposal (including any joint Proposal). If a Proposer submits more than one Proposal, all Proposals from that Proposer may be rejected.

2.12 Changes, Modifications and Cancellation

The Texas Lottery reserves the right to make changes to and/or cancel this RFP and will post all changes and modifications, whether made as a result of a potential Proposer's written inquiries or otherwise, and cancellation notices on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>, and the Texas Lottery web site, <http://www.txlottery.org>. It is the responsibility of the Proposer to check these web sites for any additional information regarding this RFP.

2.13 Modification of Information Supporting a Proposal

Each Proposer is under a continuing obligation to notify the Texas Lottery in writing following the submission of its Proposal of any changes, updates, modifications, etc., to the information, data or facts submitted in its Proposal which could reasonably be expected to affect the Texas Lottery's consideration of the Proposal.



2.14 Additional Information

By submitting a Proposal, a Proposer grants the Executive Director the right to obtain any information from any lawful source regarding the past history, practices, conduct, ability and eligibility under the State Lottery Act of a Proposer to supply goods, services and requirements and the past history, practices, conduct and ability of any director, officer or key employee of a Proposer. By submitting a Proposal, the prospective Proposer generally releases from liability and waives all claims against any party providing information about the Proposer at the request of the Executive Director. Such information may be taken into consideration in evaluating Proposals.

2.15 Proposal Evaluation and Contract Award

- 2.15.1 The Executive Director intends to conduct a fair, comprehensive and impartial evaluation of all Proposals received in response to this RFP using an evaluation committee. The evaluation committee will be selected by the Executive Director and may consist of Texas Lottery employees or outside individuals with expertise in particular areas. The Texas Lottery's General Counsel, other in-house legal counsel, and outside legal counsel may assist by advising the evaluation committee. Texas Lottery employees and consultants may also assist in the process as technical non-voting members of the evaluation committee.
- 2.15.2 Each member of the evaluation committee will conduct an independent review of each Proposal responsive to this RFP. It is recognized that individual members of the evaluation committee may have more expertise in certain areas than others, and that their review may focus on particular areas of the Proposals.
- 2.15.3 The evaluation committee may request clarification of information or representations in a Proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record.
- 2.15.4 The evaluation of Proposals will be conducted in accordance with 16 Texas Administrative Code § 401.101.



2.15.5 At a minimum, the factors to be considered by the evaluation committee in evaluating Proposals shall include:

- (i) the proposer's price to provide the goods or services;
- (ii) the probable quality of the offered goods or services;
- (iii) The agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering, among other criteria:
 - (I) the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;
 - (II) the qualifications of the proposer's personnel;
 - (III) the experience of the proposer in providing the requested goods or services;
 - (IV) the financial status of the proposer; and
- (iv) whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

A copy of the scoring matrix is included as Attachment G.

2.15.6 The Texas Lottery reserves the right to request a best and final offer from any or all Proposers.

2.15.7 A written notice of award will be sent to all Proposers immediately following execution of a written Contract.

2.16 Protest Procedure

Any protest shall be governed by Texas Government Code § 466.101 and 16 Texas Administrative Code §§ 401.102-103.

2.17 Historically Underutilized Business Participation

The Texas Lottery Commission is committed to the State of Texas Historically Underutilized Business (HUB) program, and encourages the use of HUBs in its contracting. Due to the expected dollar value of the initial contract term, a HUB



Subcontracting Plan (HSP) determination is not required for this RFP. Therefore, Proposers are not required to complete and submit an HSP form with their Proposals.

However, all Proposers should review the Commission's Policy on HUB Utilization, included as Attachment C, which includes the definition of a HUB and the State's HUB participation goals. The goods and/or services being requested in this RFP are classified as Professional Services. The goal for this contract is 20%.

By submitting a Proposal, each Proposer certifies that if it intends to use subcontractors to provide any of the goods and/or services requested in this RFP, it will make an effort to voluntarily meet or exceed the goals set forth by the Texas Lottery Commission for HUB participation in this contract.

All Proposers must answer the following questions:

- a. Is the Proposer a HUB? Yes _____ No _____
- b. If the Proposer is a certified HUB vendor with the Texas Comptroller of Public Accounts, please provide HUB certification number: _____
- c. Does the Proposer plan to use HUB subcontractor(s) to provide any of the goods and/or services requested in this RFP? Yes _____ No _____

2.18 HUB Subcontractor Information

To assist the Texas Lottery Commission in receiving credit for the use of all HUB subcontractors, each woman- or minority-owned subcontractor should be certified with the State of Texas. If not currently certified, woman- and minority-owned businesses may access information about HUB certification via the Texas Comptroller of Public Accounts website at: <http://www.window.state.tx.us/procurement/prog/hub/>. Proposers who are interested in locating potential HUB subcontractors may access a list of certified



HUBs via the internet at:
<http://www.window.state.tx.us/procurement//cmbl/cmbllhub.html>.

If Proposer intends to use HUB subcontractors, please submit the following information for each HUB subcontractor with your response:

- (a) Vendor Identification (VID) or HUB Certification Number
- (b) Business Name
- (c) Business Address
- (d) Business Telephone and Fax number
- (e) If not HUB certified, identify business ownership: African American, Native American, Hispanic American, Asian Pacific, Woman (Non-Minority)
- (f) If not HUB certified, is business certified with other organizations or governmental entities (i.e., minority business councils, cities, etc.)?

2.19 Monthly Subcontracting Reports

Following a contract award, if the Successful Proposer is using HUB subcontractors, a monthly subcontracting report must be submitted. The monthly report is due by the 10th of each month, or on the date requested by the Texas Lottery Commission.



PART 3

CONTRACTUAL TERMS AND CONDITIONS

3.1 Introduction

This part describes the terms and conditions which apply to the procurement process and which will become part of the Contract executed pursuant to this RFP. The Texas Lottery reserves the right to incorporate additional provisions in any Contract in the best interest of the Texas Lottery.

3.2 Governing Law

The procurement process, the award procedure, and any Contract resulting from this RFP shall be governed by, construed and interpreted in accordance with the applicable laws of the State of Texas. Any and all actions or suits brought by a Proposer or any related party regarding this RFP or any Contract resulting therefrom shall be brought in the district court of the County of Travis of the State of Texas. By submitting a Proposal, a prospective Proposer is deemed to waive the right to bring any action in any other court. This section is purely a venue provision and shall not be deemed a waiver of sovereign immunity.

3.3 Contract Elements

- 3.3.1 Any Contract between the Texas Lottery and the Successful Proposer will follow the general format specified by the Texas Lottery. The Texas Lottery reserves the right to negotiate provisions in addition to those stipulated in this RFP. The contents of this RFP, as modified by published addenda, and the Successful Proposer's Proposal will be incorporated into the Contract. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the written Contract, the RFP, and the Successful Proposer's Proposal. Specific exceptions to this general rule may be noted in the written Contract.



- 3.3.2 If any term or provision of this RFP or a Contract executed pursuant to this RFP is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the RFP or Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

3.4 Amendments

Any Contract resulting from this RFP may be amended only by a written agreement signed by both parties.

3.5 Waiver

The failure of the Texas Lottery to object to or to take affirmative action with respect to any conduct of a Successful Proposer which is in violation or breach of the terms of any Contract resulting from this RFP shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

3.6 Clarification of Lottery's Intent

It is the responsibility of the Successful Proposer to address and resolve all questions with the Texas Lottery's designated staff members, and achieve a clear understanding of all Texas Lottery requirements during each stage of the Contract term. The Texas Lottery will use reasonable efforts to provide timely responses to questions of policy or procedure as they may affect the Successful Proposer's effort. Key Texas Lottery staff will be available to the Successful Proposer on a reasonable basis, but may not be available on State holidays or weekends. The Texas Lottery's normal office hours are from 8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday of each week of the Contract term, except State holidays.

3.7 Lottery's Financial Obligations

The financial obligations of the Texas Lottery under any Contract resulting from this RFP are payable solely out of the income, revenues and receipts of the Texas Lottery and are subject to statutory restrictions and appropriations. Performance by the Texas Lottery



under any Contract resulting from this RFP is subject to acts of the Texas Legislature. The Texas Lottery shall have no liability in the event that performance by the Texas Lottery is compromised or terminated by acts or omissions of the Texas Legislature.

3.8 Relationship of the Parties

The Successful Proposer and the Texas Lottery agree and understand that the Successful Proposer shall render the goods, services and requirements under any resulting Contract as an independent contractor, and nothing contained in the Contract will be construed to create or imply a joint venture, partnership, principal, agent or any other relationship between the parties. Employees of the Successful Proposer will not be considered employees of the Texas Lottery within the meaning of any federal, state, or local law, ordinance, or regulation including, but not limited to, laws, ordinances, or regulations concerning unemployment insurance, social security benefits, workers compensation, or withholding requirements. The Successful Proposer shall be responsible for complying with any such laws, ordinances, or regulations, and shall indemnify and hold harmless the Texas Lottery from any costs or damages, including attorney's fees, sustained by the Texas Lottery resulting from a Successful Proposer's breach of its obligations under this section.

3.9 Payment

- 3.9.1 All payments will be made in accordance with Texas Government Code § 2251.001 *et seq.* ("Payment for Goods and Services"). The Successful Proposer shall submit invoices monthly for the previous month's services. Invoices will include the Contract number, services rendered and date of services. Invoices may be submitted by mail to the Texas Lottery Commission, P. O. Box 16630, Austin, Texas 78761-6630, Attn: Accounts Payable or by e-mail to AccountsPayable@lottery.state.tx.us. Payments will be made only upon the completion of services or after the delivery of goods authorized in an approved invoice.
- 3.9.2 The Successful Proposer agrees that if the Texas Comptroller of Public Accounts is prohibited from issuing a warrant to the Successful Proposer under Section 403.055 of



the Texas Government Code, any payments owed to the Successful Proposer under any Contract resulting from this RFP will be applied towards the debt or delinquent taxes that the Successful Proposer owes the State of Texas until the debt or delinquent taxes are paid in full.

3.10 Assignments

No right or obligation of the Successful Proposer under any Contract may be assigned by the Successful Proposer without the prior written approval of the Texas Lottery, and in the event of any such approval, the terms and conditions hereof shall apply to and bind the party or parties to whom the right or obligation is assigned as fully and completely as the Successful Proposer is hereunder bound and obligated. No assignment shall operate to release the Successful Proposer from its liability for the timely and effective performance of its obligations hereunder. Assignments made in violation of this provision shall be null and void.

3.11 Subcontracting

3.11.1 The Successful Proposer is prohibited from subletting, conveying, assigning or otherwise disposing of all or any portion of any Contract resulting from this RFP, its rights, title, or interest therein, or its power to execute such agreement without the previous written approval of the Texas Lottery. If any part of any Contract between the Texas Lottery and the Successful Proposer is to be subcontracted, the Successful Proposer must obtain prior written approval from the Texas Lottery, and the Subcontractor must comply with all applicable requirements of the Texas Lottery. The Texas Lottery reserves the sole right to require the Successful Proposer to terminate any Subcontractor with or without cause.

3.11.2 In the event the Texas Lottery approves of the use of any Subcontractor in performance of the Contract, the Successful Proposer is not relieved of its responsibility and obligation to meet all the requirements of this RFP.



3.11.3 The Texas Lottery will incur no additional obligations and the obligations of the Successful Proposer will not be reduced as a result of any such subcontracts.

3.11.4 The Successful Proposer agrees to indemnify and hold the Texas Lottery harmless from any of the claims or actions of its Subcontractors.

3.12 Lottery Approval of Staffing

3.12.1 The Successful Proposer shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them and the Successful Proposer shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by any Contract awarded pursuant to this RFP. The Successful Proposer shall be responsible to the Texas Lottery for the acts and omissions of the Successful Proposer's employees, agents (including, but not limited to, lobbyists) and Subcontractors and the Successful Proposer shall enforce strict discipline among the Successful Proposer's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Contract.

3.12.2 The Successful Proposer shall provide the Texas Lottery written notification and justification of any personnel changes involving employees or any Subcontractors actively involved in the service of the Texas Lottery project. The Successful Proposer must provide the Texas Lottery the resume of the person who is hired or placed and **must receive** written approval from the Texas Lottery prior to the person working on the account.

3.12.3 Notwithstanding anything herein to the contrary, any person employed by the Successful Proposer shall, at the written request of the Texas Lottery, and within the Texas Lottery's sole discretion, be removed forthwith by the Successful Proposer from work relating to the Contract.



3.13 Compliance

The Successful Proposer agrees to comply with all applicable laws, rules and regulations, including without limitation those involving non-discrimination on the basis of race, color, religion, national origin, age, sex and disability.

3.14 Term of Contract

3.14.1 Any Contract resulting from this RFP will commence on the Contract execution date and continue through March 31, 2011, subject to the termination provisions in this RFP and subject to the Texas Lottery being continued and funded by the Texas Legislature.

3.14.2 The Texas Lottery reserves the right to renew any Contract resulting from this RFP, at its sole discretion, for up to three (3) additional one-year periods, at the Contract rate or rates as modified during the term of the Contract.

3.15 Termination at Will

The Texas Lottery, in its sole discretion, may terminate, in whole or in part, any Contract resulting from this RFP at will and without cause upon no less than thirty (30) Days' advance written notice. The Texas Lottery also may terminate any Contract immediately with written notice if the Executive Director, in his or her sole judgment, believes that the integrity or security of the Texas Lottery is in jeopardy and it is in the best interest of the Texas Lottery to do so. The Texas Lottery's right to terminate for convenience any Contract resulting from this RFP is cumulative of all rights and remedies which exist now or in the future.

3.16 Termination for Cause

The Texas Lottery reserves the right to terminate, in whole or in part, any Contract resulting from this RFP upon no less than five (5) Days' notice upon the following conditions:

- (a) A receiver, conservator, liquidator or trustee of the Successful Proposer, or of any of its property, is appointed by order or decree of any court or agency or



supervisory authority having jurisdiction; or an order for relief is entered against the Successful Proposer under the Federal Bankruptcy Code; or the Successful Proposer is adjudicated bankrupt or insolvent; or any portion of the property of the Successful Proposer is sequestered by court order and such order remains in effect for more than thirty (30) Days after such party obtains knowledge thereof; or a petition is filed against the Successful Proposer under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) Days, or

- (b) The Successful Proposer files a case under the Federal Bankruptcy Code or is seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law, or
- (c) The Successful Proposer makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee, or liquidator of the Successful Proposer or of all or any part of its property; or judgment for the payment of money in excess of \$50,000.00 (which is not covered by insurance) is rendered by any court or governmental body against the Successful Proposer, and the Successful Proposer does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within thirty (30) Days from the date of entry thereof, and within said 30-day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under generally accepted accounting principles; or a writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of



the Successful Proposer, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) Days after its entry, or

- (d) A court of competent jurisdiction finds that the Successful Proposer has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or
- (e) The Successful Proposer fails to communicate with the Texas Lottery as required by the Contract, or
- (f) The Successful Proposer fails to remove any person from work relating to the Contract upon written notice from the Texas Lottery, or
- (g) The Successful Proposer breaches the RFP's standard of confidentiality with respect to this RFP or the goods or services provided hereunder, or
- (h) The Texas Lottery makes a written determination that the Successful Proposer has failed to substantially perform under the Contract, which determination shall specify the events resulting in the Texas Lottery's determination that the Successful Proposer has failed to substantially perform under the Contract, or
- (i) The Successful Proposer fails to comply with any of the terms, conditions or provisions of the Contract, in any manner whatsoever, or
- (j) The Successful Proposer engages in any conduct that results in a negative public impression including, but not limited to, creating even an appearance of impropriety with respect to the Texas Lottery, the Successful Proposer, or the State of Texas.

3.17 Termination for Impossibility of Performance

The Texas Lottery reserves the right to terminate, in whole or in part, any Contract resulting from this RFP upon no less than five (5) Days' notice upon any of the following conditions:



- (a) The failure of the Texas Legislature to appropriate funds to the Texas Lottery for any Contract resulting from this RFP.
- (b) Any act or omission by the Texas Legislature which renders performance by the Texas Lottery impossible.

3.18 Termination without Penalty

Pursuant to Texas Government Code § 466.014(c), the Executive Director is permitted to terminate any Contract entered into as a result of this RFP, without penalty, if an investigation reveals that the Successful Proposer would not be eligible for a sales agent license under Texas Government Code § 466.155.

3.19 No Liability Upon Termination

If any Contract entered into as a result of this RFP is terminated for any reason, the Texas Lottery and the State of Texas shall not be liable to the Successful Proposer for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, the Successful Proposer may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

3.20 Warranties

- 3.20.1 The Successful Proposer warrants and agrees that it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.
- 3.20.2 The Successful Proposer warrants and agrees that it possesses the legal authority and capacity to enter into and to perform any Contract resulting from its response to this RFP, and that it has the financial ability to perform its obligations under such Contract.
- 3.20.3 The Successful Proposer warrants and agrees that it has been duly authorized to operate and to do business in all places where it will be required to do business under any Contract awarded pursuant to this RFP; that it has obtained or will obtain all necessary licenses and permits required in connection with such Contract; and that it will fully



comply with all laws, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of such Contract.

3.20.4 The Successful Proposer warrants and agrees that it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under any Contract awarded pursuant to this RFP.

3.20.5 The Successful Proposer further represents and warrants that all goods and services it supplies in its performance under any Contract awarded pursuant to this RFP shall meet the performance standards required thereunder and shall be performed in a prompt, high quality, professional and competent manner using only qualified personnel.

3.20.6 The Successful Proposer warrants and agrees that it will not take any action inconsistent with any of the terms, conditions, agreements, or covenants set forth in this RFP without the express written consent of the Texas Lottery.

3.20.7 The Successful Proposer warrants that it is eligible for a sales agent license under Texas Government Code Ann. § 466.155 (Chapter 466 is also known as the State Lottery Act).

All of the above warranties shall survive termination of this Contract.

3.21 Licenses and Permits

The Successful Proposer shall obtain, maintain and pay for all licenses, permits and certificates, including all professional licenses required by any statute, ordinance, rule or regulation.

3.22 Successful Proposer Site Visits

The Texas Lottery shall have the free and unrestricted right, acting by itself or through its authorized representatives, to enter the premises of the Successful Proposer and any Subcontractors, and to enter any other sites involved in providing goods or services under any Contract resulting from this RFP, to examine their operations and to inspect and copy the records of the Successful Proposer pertaining to goods and services provided under any Contract resulting from this RFP. The Successful Proposer agrees that the Successful



Proposer and its Subcontractors shall implement all reasonable quality control and security procedures requested by the Texas Lottery or representatives as designated by the Texas Lottery. The TLC will use reasonable efforts not to disrupt the normal business operations of the Successful Proposer (or subcontractor, as applicable) during site visits announced or unannounced.

3.23 Intellectual Property Rights

3.23.1 *Ownership.* As between the Successful Proposer and TLC, the Works and Intellectual Property Rights therein are and shall be owned exclusively by TLC, and not the Successful Proposer. The Successful Proposer specifically agrees that all Works shall be considered “works made for hire” and that the Works shall, upon creation, be owned exclusively by TLC. To the extent that the Works, under applicable law, may not be considered works made for hire, the Successful Proposer hereby agrees that the Contract resulting from this RFP effectively transfers, grants, conveys, assigns, and relinquishes exclusively to TLC all right, title and interest in and to all ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and TLC shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works.

3.23.2 *Ownership of Prior Rights by TLC.* All intellectual property, including the Intellectual Property Rights therein, owned by TLC prior to the execution of this RFP or any Contract resulting therefrom (*e.g.*, copyrights, trademarks, etc.) shall continue to be exclusively owned by TLC, and Successful Proposer shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such intellectual property solely for purposes set forth in this RFP or resulting Contract, and only for the duration of such Contract.

3.23.3 *Ownership of Prior Rights by Successful Proposer.* All intellectual property, including the Intellectual Property Rights therein, owned by Successful Proposer prior to the issuance of this RFP shall continue to be exclusively owned by Successful Proposer, and TLC shall have no ownership thereof, and no rights thereto, other than the limited, non-



exclusive right to use such intellectual property solely for purposes set forth in this RFP or resulting Contract, and only for the duration of such Contract.

3.23.4 *Further Actions.* The Successful Proposer, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by TLC to evidence more fully the transfer of ownership of all Works to TLC to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by TLC. In the event TLC shall be unable for any reason to obtain the Successful Proposer's signature on any document necessary for any purpose set forth in the foregoing sentence, the Successful Proposer hereby irrevocably designates and appoints TLC and its duly authorized officers and agents as the Successful Proposer's agent and the Successful Proposer's attorney-in-fact to act for and in the Successful Proposer's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Successful Proposer.

3.23.5 *Waiver of Moral Rights.* The Successful Proposer hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Successful Proposer may now have or which may accrue to the Successful Proposer's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

3.23.6 *Confidentiality.* All Works and all materials forwarded to the Successful Proposer by TLC for use in and preparation of the Works, shall be deemed the confidential information of TLC, and the Successful Proposer shall not use, disclose, or permit any person to use or obtain the Works, or any portion thereof, in any manner without the prior written approval of TLC.



3.23.7 *Injunctive Relief.* The RFP and any Contract is intended to protect TLC's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to TLC's business. Therefore, the Successful Proposer acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property, licensing, and confidentiality provisions of this RFP, upon a request by TLC, without requiring proof of irreparable injury as same should be presumed.

3.23.8 *Return of Works.* Upon the request of TLC, but in any event upon termination of any Contract resulting from this RFP, the Successful Proposer shall surrender to TLC all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Successful Proposer or furnished by TLC to the Successful Proposer, including all materials embodying the Works, any TLC confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This section is intended to apply to all Works made or compiled by the Successful Proposer, as well as to all documents and things furnished to the Successful Proposer by TLC or by anyone else that pertains to the Works.

3.24 Pre-existing and Third Party Rights

3.24.1 To the extent that any pre-existing rights and/or third party rights are embodied or reflected in the Works, the Successful Proposer hereby grants to the Texas Lottery the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. The Successful Proposer agrees to notify the Texas Lottery on delivery of the Works if such materials include any such pre-existing rights. On request, the Successful Proposer shall provide the Texas Lottery with documentation indicating a third party's written approval for the Successful Proposer to



use any pre-existing rights that may be embodied or reflected in the Works. The Successful Proposer shall indemnify, defend, and hold harmless the Texas Lottery from any losses, claims, damages, costs (including attorneys' fees) or causes of action relating to any claim or assertion by any third party that the Works include third party materials or infringe third party rights.

- 3.24.2 The Successful Proposer agrees that it shall have and maintain, during performance of any Contract arising from this RFP, written agreements with all employees, contractors, Subcontractors, or agents engaged by the Successful Proposer in performance hereunder, granting the Successful Proposer rights sufficient to support all performance and grants of rights by the Successful Proposer. Copies of such agreements shall be provided to the Texas Lottery promptly upon request.

3.25 Remediation

If the Works or the Intellectual Property Rights therein become the subject of a lawsuit or claim of infringement, or the Successful Proposer becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, the Successful Proposer shall exercise one (1) of the following two (2) options in order to provide the Texas Lottery with continued and uninterrupted use of the Works and Intellectual Property Rights therein: (a) obtain for the Texas Lottery the right to continue the use of the alleged infringing Works at no additional cost to the Texas Lottery, or (b) obtain alternative, substitute or new Works for the allegedly infringing Works, which are of equivalent or superior quality to the allegedly infringing Works, at no additional cost to the Texas Lottery, and subject to the acceptance of the Texas Lottery in its sole discretion.

3.26 Intellectual Property Search

The Successful Proposer, at its expense, shall conduct all appropriate intellectual property searches (e.g., full copyright, trademark, service mark or patent searches) for all proposed Works, to ensure that the proposed Works are protectable by the Texas Lottery and do not infringe the Intellectual Property Rights of any third person or entity. The Successful



Proposer holds the Texas Lottery harmless from the infringement of such Works, as set forth above.

3.27 Accounting Records

The Successful Proposer is required to maintain its books, records, information and other materials pertaining to any Contract awarded pursuant to this RFP in accordance with generally accepted accounting principles. These records shall be available to the Texas Lottery, its internal auditor or external auditors (and other designees) and the Texas State Auditor at all times during the Contract period and for a period of five (5) full years after (i) the expiration date of any Contract awarded pursuant to this RFP or (ii) final payment under any Contract awarded pursuant to this RFP, whichever is later.

3.28 Right to Audit

The Successful Proposer understands that acceptance of state funds under this Contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Successful Proposer further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Successful Proposer will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Successful Proposer relating to this Contract.

3.29 Indemnification

3.29.1 The Successful Proposer shall indemnify, defend and hold harmless the Texas Lottery, its commission members, the State of Texas, and its agents, attorneys, employees, representatives and assigns (the "Indemnified Parties") from and against any and all claims, demands, causes of action, liabilities, lawsuits, losses, damages, costs, expenses



or attorneys' fees (collectively, "Claim"), and including any liability of any nature or kind arising out of a Claim for or on account of the Works, or other goods, services or deliverables provided as the result of any Contract resulting from this RFP, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of the Successful Proposer, or a Subcontractor of the Successful Proposer, or any person directly or indirectly employed by the Successful Proposer or a Subcontractor of the Successful Proposer, whether the Claim is based on negligence, strict liability, intellectual property infringement or any other culpable conduct, whether frivolous or not.

3.29.2 The Successful Proposer's liability shall extend to and include all reasonable costs, expenses and attorneys' fees incurred or sustained by the Indemnified Parties in: (a) making any investigation and in prosecuting or defending any Claim arising out of or in connection with the Works, or other goods, services or deliverables provided under any Contract resulting from this RFP (including but not limited to any claim that all or any portion of the Works infringes the patent, copyright, trade secret, trademark, confidential information, or other Intellectual Property Rights of any third party); (b) obtaining or seeking to obtain a release therefrom; or (c) enforcing any of the provisions contained in this RFP or the Contract. The Indemnified Parties, upon giving notice to the Successful Proposer, shall have the right in good faith to pay, settle or compromise, or litigate any Claim under the belief that the Claim is well founded, whether it is or not, without the consent or approval of the Successful Proposer unless the Successful Proposer protests in writing and, simultaneously with such protest deposits with the Indemnified Parties collateral satisfactory to the Indemnified Parties sufficient to pay and satisfy such Claim and any penalty, interest, loss, liability, cost, charge, attorneys' fee, or judgment that may result from such Claim. The Texas Lottery has sole discretion as to the choice and selection of any attorney who may represent the Texas Lottery. To the extent that the Successful Proposer makes any payments to or on behalf of the Indemnified Parties under the Contract, and to the extent permissible by law, the Successful Proposer shall be fully subrogated to all rights and claims of the Indemnified Parties in connection therewith. In



any event, the Indemnified Parties shall provide reasonable notice to the Successful Proposer of any Claim known to the Indemnified Parties to arise out of the Contract.

3.30 Bonds and Insurance

All required bonds and insurance must be issued by companies or financial institutions which are financially rated Excellent or better as rated by A.M. Best Company and duly licensed, admitted, and authorized to do business in the State of Texas. The Texas Lottery shall be named as the obligee in each required bond. Each insurance policy, except those for workers' compensation, employer's liability and professional liability, must name the Texas Lottery (and its officers, agents and employees) as an additional insured on the original policy and all renewals or replacements. Insurance coverage must include a waiver of subrogation in favor of the Texas Lottery Commission, its officers and employees, for bodily injury (including death), property damage or any other loss. The insurance shall be evidenced by delivery to the Texas Lottery of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Upon request, the Texas Lottery shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as otherwise expressly provided herein, required coverage must remain in full force and effect throughout the term of the Contract and any extensions thereof, and provide adequate coverage for incidents discovered after termination of the Contract. Insurance coverage shall not be canceled, non-renewed or materially changed except after thirty (30) days written notice by certified mail to the Texas Lottery. The Successful Proposer must submit original certificates of insurance for each required insurance contract within fifteen (15) days after contract execution. Renewal certificates shall be submitted prior to or within fifteen (15) days after expiration of the existing policy. Proposers must submit required bonds when and as provided in sections of this RFP outlining bond requirements.



3.31 Self Insurance

The Successful Proposer may not elect to provide entirely or in part for the insurance/bond protections described in this RFP through self-insurance. A deductible provision contained in an insurance policy that meets the requirements of this RFP is not considered as self-insurance unless the deductible amount exceeds five percent (5%) of the face amount of the insurance policy.

3.32 Performance Bond

3.32.1 The Successful Proposer shall provide an original performance bond (as shown in Attachment F attached hereto and incorporated for all purposes) in the amount of twenty five thousand (\$25,000) within fifteen (15) Days of execution of the Contract.

3.32.2 The bond must be maintained in full force and effect for the initial term and any renewal term or extension of the Contract. The bond shall be forfeited to the Texas Lottery if the Successful Proposer fails to perform as required by the Contract, pay sanctions or liquidated damages, or indemnify the Texas Lottery.

3.33 General Liability Insurance

The Successful Proposer must maintain commercial general liability insurance, as follows: Commercial General Liability Insurance including, but not limited to, premises/operations, personal & advertising injury, products-completed operations, fire damage and contractual liability including coverage for independent contractors, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products-completed operations aggregate, \$500,000 personal & advertising injury and \$50,000 fire damage. The policy must be endorsed to show the Texas Lottery Commission and Spire Realty Group, LP as additional insured and with a waiver of subrogation in favor of the Texas Lottery Commission and Spire Realty Group, LP.



3.34 Workers' Compensation & Employers Liability Insurance

The Successful Proposer must maintain Workers' Compensation insurance coverage with statutory limits, and Employers Liability insurance coverage with minimum limits for bodily injury:

- a) by accident, \$1,000,000 per each accident; and
- b) by disease, \$1,000,000 per employee with a per policy aggregate of \$1,000,000.

Coverage must include a waiver of subrogation in favor of the Texas Lottery Commission and Spire Realty Group, LP, their respective officers, directors and employees, for bodily injury (including death), property damage or any other loss applicable to the Workers' Compensation policy.

3.35 Professional Liability (Errors and Omissions) Insurance

The Successful Proposer must maintain professional liability (including errors and omissions) insurance coverage for the rendering of, or failure to render, professional services with minimum limits of one million dollars (\$1,000,000) per occurrence, to be in full force and effect during the term of the Contract, including any extension thereof and one year thereafter. Coverage must indemnify the Texas Lottery for direct loss due to any error or omission caused by the Successful Proposer, its officers, employees or Subcontractors, regardless of negligence.

3.36 Business Automobile Insurance

The Successful Proposer must maintain Business Automobile Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single bodily injury (including death) and property damage limit of \$500,000 per occurrence.

3.37 Disclosure of Litigation, Sanctions and Liquidated Damages

Each Proposer must include in its Proposal a complete disclosure of any material civil or criminal litigation or indictment either threatened or pending involving the Proposer. The



Proposer must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers to, but is not limited to, any action or pending action that a reasonable person knowledgeable in the gaming industry would consider relevant to any gaming operation or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the gaming industry and its operations, together with any litigation threatened or pending that may result in a substantial change in the Proposer’s financial condition, as described in Section 4.6.5. The Proposer must also include a complete list of all sanctions and liquidated damages assessed against the Proposer during the last three (3) years prior to submission of the Proposal. The Proposer must also disclose any sanctions and liquidated damages during the last three (3) years involving Subcontractors to be assigned to this project. This is a continuing disclosure requirement; any litigation, sanctions or liquidated damages commencing or assessed after submission of a Proposal (and for the Successful Proposer, after Contract Award) must be disclosed in a written statement within fifteen (15) Days of its occurrence. The Successful Proposer shall be required to file with the Texas Lottery comprehensive monthly reports regarding all threatened or pending litigation involving the Successful Proposer’s Texas operations and all threatened or pending litigation that may be considered material to the overall operations of the Successful Proposer.

3.38 Force Majeure / Delay of Performance

3.38.1 Except as otherwise provided, neither the Successful Proposer nor the Texas Lottery shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Force majeure is defined as those causes generally recognized under Texas law as constituting impossible conditions. The Successful Proposer must inform the Texas Lottery in writing within three (3) Days of the existence of such force majeure or otherwise waives this right as a defense.



3.38.2 The Successful Proposer shall immediately upon discovery notify the Executive Director in writing of any delays in performance dates regardless of responsibility, fault or negligence. If the Successful Proposer contends that the delay is the responsibility, fault or negligence of Texas Lottery staff, the Successful Proposer must provide written notice within five (5) Days of the occurrence, and to the extent possible, identify the event or individual responsible so that the Executive Director may take appropriate action to remedy the situation. Failure to provide this notice to the Executive Director before the deadline noted above shall waive the Successful Proposer's right to assert the Texas Lottery's action/inaction as a defense.

3.39 Taxes, Fees and Assessments

3.39.1 The Texas Lottery shall have no responsibility whatsoever for the payment of any federal, state or local taxes which become payable by the Successful Proposer or its Subcontractors, or their agents, officers or employees. The Successful Proposer shall pay and discharge when due all such taxes, license fees, levies, and other obligations or charges of every nature.

3.39.2 The Successful Proposer shall be responsible for payment of all taxes attributable to any Contract awarded pursuant to this RFP and any and all such taxes shall be identified under the Successful Proposer's federal tax identification number. The Successful Proposer shall pay all federal, state and local taxes of any kind, including without limitation income, franchise, ad valorem personal property, sales, use, lease, payroll, consumption, distribution and storage taxes, for the goods, services and systems relating thereto provided by the Successful Proposer, whether or not such taxes are in effect as of the date the Contract resulting from this RFP is signed or scheduled to go into effect, or become effective during the initial term and any and all renewal or extension terms, if any.

3.40 News Releases

The Successful Proposer shall not issue any news releases or publish information to the public pertaining to this procurement process or the performance of any Contract



awarded by the Texas Lottery without prior written approval of the Texas Lottery, and then only in cooperation with the Texas Lottery. For any required disclosure or any public release of information of any kind, including a non-required disclosure, that is under a deadline imposed by any statutory or regulatory authority, the Successful Proposer shall seek approval from the Texas Lottery no less than two (2) Working Days prior to the deadline for the release of the information. In any case in which a deadline for the release of information exists, approval of the release by the Texas Lottery shall neither be construed as an endorsement of the release, as assent to the content of the release, as an indication of the accuracy of the information in the release, nor as any admission of any kind regarding any subject covered in the release.

3.41 Advertising

The Successful Proposer agrees not to use the Texas Lottery's name, logos, images, or any data or results arising from this procurement process or Contract awarded pursuant to this RFP as a part of any commercial advertising, or to promote the Successful Proposer in another jurisdiction's procurement process, without prior written approval by the Texas Lottery.

3.42 Hiring Of Texas Lottery Personnel

- 3.42.1 At all times following issuance of this RFP and ending with either the award of a Contract or the rejection of all Proposals, Proposers are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Texas Lottery employee involved in the evaluation of Proposals, the Contract Award, or contract negotiations. A Proposer making such an offer or proposition may be disqualified from further consideration.
- 3.42.2 Proposers shall not engage the services of any State of Texas employee while such person remains employed by the State without the written consent of the Texas Lottery.



3.43 Hiring of Lobbyist; Supplemental Information

Each Proposer shall list the names, addresses and telephone numbers for all lobbyists and/or legislative consultants who will perform services, pursuant to previously executed contracts, or who have performed services in the State of Texas during the preceding three (3) years for the Proposer or any Subcontractors of the Proposer. A Proposer shall immediately notify the Texas Lottery in the event of change of lobbyist or legislative consultant information.

3.44 Notices

Each Proposer shall indicate in its Proposal the name and address of the person to whom any notices shall be given. Notices to the Texas Lottery shall be made by personal delivery or by certified (or registered) mail return receipt requested at the address below unless the Proposer is notified in writing by the Texas Lottery of any change:

Texas Lottery Commission
Attention: Purchasing & Contracts
P.O. Box 16630
Austin, Texas 78761-6630
Fax (512) 344-5058

3.45 Non-Disclosure

The Successful Proposer shall maintain as confidential, and shall not disclose to third parties without the Texas Lottery's prior written consent, any Texas Lottery information including but not limited to the Texas Lottery's business activities, practices, systems, conditions, products, services, public information and education plans and related materials, and game and marketing plans.

3.46 Incidents and Anomalies

The Successful Proposer shall report immediately all significant incidents and anomalies to the Texas Lottery, followed by a written report to be submitted within one workday of the incident or anomaly. At a minimum, incident and anomaly reporting shall include a description of the incident, its cause, and corrective action taken for each occurrence that



affects the Texas Lottery, lottery retailers, or players, and deviation from established procedures and those items where sanctions are applicable.

3.47 Usufruct

If, for any reason other than breach of contract by the Texas Lottery, the Successful Proposer should lose its ability to service a Contract resulting from this RFP, the Texas Lottery shall acquire a usufruct in all contractual items owned by the Successful Proposer in conjunction with the Contract and which are necessary to provide such services. Said usufruct shall be limited to the right of the Texas Lottery to possess and make use of such contractual items solely for the use and benefit of the Texas Lottery in operating, maintaining, altering, replacing and improving the programs and systems being used by the Texas Lottery under the Contract. Such usufruct shall be limited in time to the duration of the Contract and any renewal or extension thereof, and in scope for programs, systems, and other items being used by the Texas Lottery under the Contract.

3.48 Ticket Purchase

In accordance with Texas Government Code § 466.254 (Purchase of Ticket by or Payment of Prize to Certain Persons), no member, officer or employee of the Successful Proposer, or of any Subcontractor(s), directly involved in selling or leasing the goods or performing the services that are the subject of a Contract with the Texas Lottery Commission or that member's, officer's or employee's spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent, who resides in the household of such officer or employee (collectively, "Family Members"), shall purchase a Texas Lottery ticket or be paid a prize in any Texas Lottery game. The Successful Proposer shall ensure that these requirements are made known to each member, officer and employee of the Successful Proposer and any Subcontractor. Following Contract execution, the Successful Proposer agrees to provide to TLC the name, address, and any other identifying information requested by TLC, of all members, officers and employees of the Successful Proposer, or of any Subcontractor(s), directly involved in selling or leasing the goods or performing the services that are the subject of the Contract with TLC.



Successful Proposer agrees to update such information when there is a change in the direct involvement status of any of Successful Proposer's members, officers and employees, or of any Subcontractor(s). TLC considers "directly involved" to mean, by way of illustration only, responsible for and/or actively participating in (1) Contract negotiations (including Contract signatories); (2) Contract administration (e.g., regular or direct contact with TLC staff); or (3) Contract performance (including assigned project/team leaders and members and anyone else who oversees or performs the work or provides the goods or services). Again, by way of illustration, support staff (such as clerical, accounting or delivery employees) are not considered to be "directly involved" unless they also serve in the roles listed above for "directly involved" employees.

3.49 Liquidated Damages

3.49.1 **General.** It is agreed by the Texas Lottery and the Successful Proposer that:

- (a) If the Successful Proposer does not provide or perform the requirements referred to or listed in this RFP or fulfill the obligations of the Contract, damage to the Texas Lottery will result;
- (b) establishing the precise measure of damages in the event of default by the Successful Proposer may be (i) costly, (ii) time consuming, or (iii) difficult or impossible to calculate;
- (c) the liquidated damage assessments contained herein represent a good faith effort to quantify the damages that could reasonably be anticipated at the time of execution of the Contract;
- (d) the damages set forth herein are just and reasonable;
- (e) nothing contained in this section shall be construed as relieving the Successful Proposer from performing all Contract requirements whether or not said requirements are set forth herein; and



- (f) the Texas Lottery may, therefore, in its sole discretion, deduct damages from the compensation otherwise due to the Successful Proposer. All assessments of damages shall be within the sole discretion of the Texas Lottery.

3.49.2 **Liquidated Damages Assessment.** Once the Texas Lottery has determined that liquidated damages are to be assessed, the Executive Director or Executive Director's designee shall notify the Successful Proposer of the assessment(s). Failure to notify does not impact the Texas Lottery's assessment of damage and is not a condition precedent thereto. The Texas Lottery will withhold liquidated damages from payments to the Successful Proposer, or, if no payments have been made, the Texas Lottery will make demand of payment of liquidated damages. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand. In the event the Successful Proposer fails to pay within the thirty (30) Day period, the Texas Lottery may then make a claim for payment against the performance bond, with or without notice to the Successful Proposer.

3.49.3 **Failure to Assess Liquidated Damages.** The failure of the Texas Lottery to assess liquidated damages in any instance where the Texas Lottery is entitled to liquidated damages pursuant to the terms of this RFP shall not constitute waiver in any fashion of the Texas Lottery's rights to assessment of liquidated damages.

3.49.4 **Severability of Individual Liquidated Damages Clauses.** If any portion of this liquidated damages provision is determined to be unenforceable, the other portions of this provision shall remain in full force and effect.

3.49.5 **Late or Missed Deliverables.** The failure of the Successful Proposer to meet deadlines and to adhere to schedules pursuant to Section 5.5 and/or under any contract entered into as a result of this RFP may result in the assessment of liquidated damages in the amount of one thousand dollars (\$1,000) for each day of delay or part thereof.

3.49.6 **Delivery of Late Reports.** The failure of the Successful Proposer to provide any required draft or final reports as outlined in Section 5.5 and/or 5.6 and/or any report under any contract entered into as a result of this RFP may result in the assessment of liquidated



damages in the amount of five thousand dollars (\$5,000) for each Working Day, or part of a Working Day, until the report is delivered by the Successful Proposer and accepted by the Texas Lottery.

3.50 Sanctions and Remedies Schedule

3.50.1 **General.** Section 2261.101 of the Texas Government Code requires that all state contracts contain a remedies schedule, a graduated sanctions schedule, or both. Pursuant to that statutory provision, sanctions and remedies will apply for the incidents specified in this section. The sanctions and remedies will be referred to as “sanctions.”

3.50.2 **Assessment of Sanctions.** Once the Texas Lottery has determined that sanctions are to be assessed, the Executive Director or Executive Director’s designee may notify the Successful Proposer of the assessment(s). Failure or delay in notifying does not impact the Texas Lottery’s assessment of sanctions and is not a condition precedent thereto. The Texas Lottery will withhold sanctions from payments to the Successful Proposer, or, if no payments are to be made, the Texas Lottery will make demand of payment of sanctions. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery’s demand. In the event the Successful Proposer fails to pay within the thirty (30) Day period, the Texas Lottery may make a claim for payment against the performance bond, with or without notice to the Successful Proposer.

3.50.3 **Failure to Assess Sanctions.** The failure of the Texas Lottery to assess sanctions in any instance where the Texas Lottery is entitled to sanctions pursuant to the terms of this RFP shall not constitute waiver in any fashion of the Texas Lottery’s rights to assess sanctions.

3.50.4 **Severability of Individual Sanctions Clause.** If any portion of this sanctions provision is determined to be unenforceable, the other portions of this provision shall remain in full force and effect.

3.50.5 **Failure to Cooperate with and/or Produce Records or Information as part of Background Investigation.** The failure of the Successful Proposer to cooperate with and/or produce records or information as part of a background investigation conducted



pursuant to Section 4.7 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per Day for each Day the records/information are not produced or answers are not provided.

3.50.6 ***Failure to Disclose Litigation, Sanctions or Liquidated Damages.*** The failure of the Successful Proposer to disclose litigation, sanctions or liquidated damages as required by Section 3.37 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident.

3.50.7 ***Failure to Obtain Prior Written Approval before Issuing News Release.*** The failure of the Successful Proposer to comply with the requirements of this RFP regarding the issuance of news releases may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident.

3.50.8 ***Unauthorized Disclosure.*** The failure of the Successful Proposer to comply with the non-disclosure requirement in Section 3.45 may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) for each unauthorized disclosure.

3.50.9 ***Purchase of Texas Lottery Tickets.*** The failure of the Successful Proposer to comply with the requirements of Section 3.48 of this RFP regarding the purchase of Texas Lottery tickets may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) per incident.

3.50.10 ***Failure to Report Significant Incidents and Anomalies and/or to Comply with the RFP Code of Conduct Requirements.*** The failure of the Successful Proposer to report all significant incidents and anomalies to the Texas Lottery may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per Day for each Day not reported. The failure of the Successful Proposer to comply with the code of conduct requirements in Section 3.60 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident.



3.50.11 Failure to Notify the Texas Lottery of a Change in Financial Condition or Change of Ownership. The failure of the Successful Proposer to notify the Texas Lottery of a change in financial condition or change of ownership or control as required by this RFP may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident.

3.50.12 Failure to Permit Examination, Produce Requested/Required Records or Information, or Provide an Answer. Unless otherwise specified in this RFP or any Contract resulting therefrom, the Successful Proposer must permit an examination, produce requested records or information, or provide an answer in response to a Texas Lottery inquiry within five (5) Working Days. Failure to respond before the deadline may result in the assessment of liquidated damages in the amount of five hundred dollars (\$500) per Day for each Day the examination is not permitted, the information or records are not produced or the answer is not provided.

3.51 Dispute Resolution

The dispute resolution process provided for in Texas Government Code Chapter 2260 and 16 Texas Administrative Code §§ 403.201-223 must be used by the Successful Proposer to attempt to resolve any disputes brought by the Successful Proposer arising under this Contract.

3.52 Certifications

3.52.1 Pursuant to Texas Government Code ANN. § 466.103, the Executive Director may not award a contract for the purchase or lease of facilities, goods or services related to lottery operations to a person who would be denied a license as a sales agent under Texas Government Code ANN. § 466.155. All Proposers must read and be familiar with Texas Government Code ANN. § 466.155, attached hereto as Attachment D. All Proposals shall include a completed Background Certification Information form, attached hereto as Attachment D-1, which certifies that the Proposer has reviewed Texas Government Code ANN. § 466.155 and neither the Proposer nor any of the following would be denied a license as a sales agent pursuant to said section: (a) Proposer's officers, directors,



investors, owners, partners and principals, as more particularly described in Texas Government Code Ann. § 466.155 (collectively, Proposer Principals); or (b) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of any of the Proposer Principals.

3.52.2 Under § 231.006 of the Texas Family Code, each Proposer certifies that the individual or business entity named in a Proposal or Contract is not ineligible to receive the specified grant, loan or payment and acknowledges that any Contract resulting from this RFP may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Proposer subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to Contract Award.

3.52.3 Under Section 2261.053 of the Texas Government Code, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. In submitting a Proposal under this RFP, each Proposer certifies as follows: “Under Section 2261.053 of the Texas Government Code, the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

3.52.4 Each Proposer certifies that: (a) Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the



submitted Proposal; and (b) neither the Proposer nor the firm, corporation, partnership, or institution represented by the Proposer, nor anyone acting for such firm, corporation, partnership, or institution has violated the antitrust laws of the State of Texas (Tex. Bus. & Comm. Code, Sec. 15.01, et seq.), or the antitrust laws of the United States (15 U.S.C.A. Section 1, et seq.), nor communicated directly or indirectly the submitted Proposal to any competitor or any other person engaged in such line of business.

3.52.5 Proposer certifies that it is in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Proposer will complete the following information in order for the Proposal to be evaluated:

Name of Former Executive:
Name of State Agency:
Date of Separation from State Agency:
Position with Proposer:
Date of Employment with Proposer:

3.52.6 By signing this Proposal, Proposer certifies that, if a Texas address is shown as the address of the Proposer, Proposer qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

3.52.7 The TLC is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

3.52.8 Pursuant to Section 2155.004, Government Code, the Proposer has not received compensation from the Texas Lottery for participation in the preparation of the specifications for this Proposal.



3.52.9 In submitting a Proposal under this RFP, each Proposer certifies as follows: “Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

3.53 Preferences

Any Proposer entitled to a preference(s) under Texas law shall claim the preference(s) in its Proposal.

3.54 Deceptive Trade Practices; Unfair Business Practices

The Successful Proposer represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Successful Proposer has not been found to be liable for such practices in such proceedings. The Successful Proposer certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

3.55 Immigration

The Successful Proposer represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986, and the Immigration Act of 1990, regarding employment verification and retention of verification forms for any individuals who will perform any labor or services under any Contract entered into as a result of this RFP.



3.56 Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)

(1) Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(2) The Successful Proposer(s) shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Proposers not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

3.57 False Statements; Breach of Representations

By submitting a Proposal, Proposer makes all the representations, warranties, guarantees, certifications and affirmations included in its Proposal. If Proposer signed its Proposal with a false statement or is selected as the Apparent Successful Proposer and signs any Contract resulting from this RFP with a false statement, or it is subsequently determined that Proposer has violated any of the representations, warranties, guarantees, certifications or affirmations included in the RFP or resulting Contract, Proposer shall be in default and, if the determination is made before Contract Award, the Texas Lottery may reject the Proposal, or, if the determination is made after Contract Award, the Texas



Lottery may terminate the Contract for cause and pursue all other remedies available to the Texas Lottery under the RFP, the Contract and applicable law.

3.58 Limitation on Authority; No Other Obligations

Proposer shall have no authority to act for or on behalf of the Texas Lottery or the State of Texas except as expressly provided for in this RFP or any resulting Contract. Proposer may not incur any debts, obligations, expenses or liabilities of any kind on behalf of the State of Texas or the Texas Lottery.

3.59 Proposer Assignment

Proposer hereby assigns to TLC any and all claims for overcharges associated with any Contract resulting from this Request for Proposal arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.

3.60 Code of Conduct

The Texas Lottery is an extremely sensitive enterprise because its success depends on preserving the public trust. The Texas Lottery incorporates the highest standards of security and integrity in the management and sale of entertaining lottery products, and lottery vendors are subject to the same scrutiny and oversight. Therefore, it is essential that operation of the Texas Lottery, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety, but also the appearance of impropriety. Because of this, the Successful Proposer shall:

- (a) Offer goods and services only of the highest standards.
- (b) Use its best efforts to prevent the industry from becoming embroiled in unfavorable publicity.
- (c) Make sales presentations in a responsible manner and when it is felt necessary to point out the superiority of its goods or services over those of its competitors, do so in such a manner as to avoid unfavorable publicity for the industry.



- (d) Avoid activities, operations, and practices that could be interpreted as improper and cause embarrassment to the Texas Lottery and/or to the industry.
- (e) Report security problems or potential security problems with any services provided pursuant to this RFP immediately and only to the Texas Lottery.
- (f) Otherwise comply with the State Lottery Act (Texas Gov't Code Ch. 466) and Texas Lottery rules and procedures.

3.61 Contact with Texas Lottery Employees

- 3.61.1 Except when circumstances require otherwise, employees of the Texas Lottery and employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should meet only at Texas Lottery headquarters.
- 3.61.2 Employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer may not offer or give anything of value to a Texas Lottery employee.
- 3.61.3 Employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should not engage in nonprofessional socialization (socialization outside of a work context) with a Texas Lottery employee. There may be circumstances, however, in which nonprofessional socialization is acceptable, for example, because of family relationships, common acquaintances, or common outside activities. The restrictions on nonprofessional socialization are not meant to apply to unplanned, incidental social contact. In such circumstances, employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should not discuss Texas Lottery business.



3.62 Non-exclusive Contract

The Texas Lottery intends to enter into a non-exclusive contract with the Successful Proposer to provide the services described in this RFP and expressly reserves the right to engage other vendor(s) to perform similar services and/or to conduct such services itself.



PART 4

REQUIRED INFORMATION

4.1 Experience of the Proposer

4.1.1 Only Proposers which are certified public accounting (CPA) firms or individuals that have, and maintain in good standing, an active license issued by the Texas State Board of Public Accountancy will be considered. Proposers must provide evidence of licensure with submission of proposal. Proposers or subcontractors should have work experience and familiarity with state and/or local government financial audits.

4.1.2 Each Proposer shall provide descriptions and verifiable references for all engagements of comparable complexity and sensitivity to the requirements of this RFP that have been conducted within the past five years. Included shall be the names, titles, addresses, telephone numbers, email addresses, and fax numbers of organizations that may be contacted to verify qualifying experience. If the Proposer has performed any audit services for the gaming industry such services must be identified in detail.

Proposers must indicate any previous State of Texas or other government experience providing similar services, including name of agency, type of work performed, and duration of project.

4.1.3 The Proposer shall state whether or not any of the following have occurred during the last three years:

- (a) The Proposer has had a contract terminated and, if so, shall provide full details, including the other party's name, address and telephone number.
- (b) The Proposer has been assessed any penalties or liquidated damages under any existing or past contracts with any state, provincial or other lottery or government agency, or past audit service contracts and if so, note the jurisdiction, the reason for and the amount of the penalty or liquidated damages for each incident.



- (c) The Proposer was the subject of (i) any disciplinary action for substandard work and unethical practices or (ii) any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of the Proposer to engage in any business, practice or activity or (iii) any disciplinary action taken against the firm or individual from any level including, but not limited to, American Institute of Certified Public Accountants (AICPA), and State Board of Public Accountancy.
 - (d) The Proposer has been involved in litigation with any state/provincial or other lottery or government agency.
 - (e) Proposer shall disclose any litigation during the past three (3) years related to any audit service contract.
- 4.1.4 The Proposer's proposal should demonstrate the Proposer's experience in providing financial audit services, the expertise of its personnel that will render the requested services, and the Proposer's ability to plan and complete the audit(s).
- 4.1.5 The Proposer must demonstrate its understanding of the services requested herein as well as submit a detailed written plan outlining how the vendor proposes to go about providing the services set forth in this RFP. The Proposer must provide detailed information on the anticipated audit plan specifically addressing and describing the Proposer's approach to providing each requirement, how the staffing resources will be allocated among the various segments of the audit, and a timeline indicating the proposed schedule of time required to complete each task.
- 4.1.6 The Proposer may propose that additional topics be included in the project if, in its judgment, their inclusion is necessary to the accomplishment of project objectives or would increase the value of the outcome of the project to the Texas Lottery.
- 4.1.7 Each Proposer shall submit its most recent peer review report. Proposers must also submit the results of any desk reviews or field reviews performed of the Proposer by federal, state or local agencies, if applicable.



- 4.1.8 The Proposer shall provide evidence to support that the Proposer is licensed and in good standing with the Texas State Board of Public Accountancy.

4.2 Experience of Personnel

- 4.2.1 Proposers must provide a list of personnel to be assigned to the Texas Lottery project. The list must include resumes for all project personnel, including name, title and job descriptions. Lists and resumes provided by Proposers must include, at a minimum, information regarding length of time spent doing present duties or related duties, references, a description of duties, projects accomplished, including scope and name of customer's company. If duties were performed for an employer other than the Proposer, the Proposal must indicate that employer's name. The Texas Lottery also requires experience information on key support personnel and technical resource personnel.
- 4.2.2 A minimum of three verifiable references for the key implementation/project leader must be provided. References must include contact person, name of company, phone, fax number and e-mail address if available.
- 4.2.3 The Successful Proposer shall provide the Texas Lottery immediate written notification of any personnel changes involving employees or any subcontractors actively involved in the service of the Texas Lottery project. Written notification and justification shall occur within three (3) business day of the personnel changes. The resume of the person who is hired or placed should be sent to the Texas Lottery and shall receive written approval prior to the person working on the account.

4.3 References

Proposers shall provide a minimum of five (5) verifiable references that include descriptions of experience for all projects of comparable complexity to the requirements of this RFP, including company name, contact name, titles, addresses and telephone numbers, e-mail addresses and fax numbers of organizations that may be contacted to verify qualifying experience.



4.4 Proposer's Contact Person

Each Proposer shall provide the name, address, telephone number, email address, and facsimile number of a person to contact concerning questions regarding its Proposal.

4.5 Conflict of Interest

- 4.5.1 Each Proposer must immediately disclose any actual, potential or perceived conflict of interest relative to the performance of the requirements of this RFP. Each Proposer must disclose any personal or business relationship of (a) itself; (b) any of its principals, officers, directors, investors, owners, partners, and employees (collectively, Proposer Personnel); (c) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of any Proposer Personnel; (d) any affiliate, or (e) any Subcontractor, with any employee or representative of the Texas Lottery (including the Texas Lottery Executive Director and its commissioners) or its vendors. As of the time of the issuance of this RFP, prime Texas Lottery vendors include, but are not limited to: GTECH Corporation, lottery operator and instant ticket vending machine supplier; Scientific Games International, instant ticket manufacturer and random animated digital drawing system; Pollard Banknote Limited Partnership, instant ticket manufacturer; TLP, Inc. dba Tracy Locke and LatinWorks, advertising services; Davila, Buschhorn and Associates, P.C., lottery drawings audit services; M & S Works, Inc., drawings broadcast services; Elephant Productions, Inc., drawings broadcast services; Barker & Herbert Analytical Laboratories, Inc., instant ticket testing services; Maxwell Locke & Ritter, LLP., annual financial audit and Mega Millions agreed-upon engagement procedures; Graves, Dougherty, Heaton & Moody P.C., outside counsel for Lottery Operations and Services Procurement; Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C., outside counsel for intellectual property matters; Eubank & Young Statistical Consulting, LLC, statistical consulting services; and Knight Security Systems LLC, surveillance camera products and related services. Additionally, any such relationship that might be perceived or represented as a conflict should be disclosed.



Failure to disclose any such relationship may be a cause for contract termination or disqualification of a Proposal.

- 4.5.2 Section 4.5.1 is a continuing disclosure requirement. Any actual, potential or perceived conflict of interest commencing after submission of a Proposal (and for the Successful Proposer, after Contract Award) must be disclosed in a written statement within fifteen (15) Days of its occurrence.

4.6 Financial Soundness

- 4.6.1 Each Proposer shall provide with its Proposal evidence of financial responsibility and stability for performance of any Contract awarded as a result of this RFP and must demonstrate the ability to finance the project described in its submission.

- 4.6.2 Proposer shall provide evidence of financial responsibility and stability based on any and/or all of the following:

1. If Proposer is the sole source of financial resources and will finance the project on its own with current resources;
2. If Proposer is the subsidiary of a parent corporation and the parent corporation is providing financial resources or assurance, the parent corporation must complete Attachment B, and the Proposer must submit financials for both the Proposer and the parent;
3. If Proposer is a joint venture or a group of affiliated companies, the Proposal must include financials for each member or affiliate of such joint venture or group, as applicable;

If 1, 2 or 3 apply, then, each Proposer shall submit the following documentation with its Proposal:

- (a) Copies of audited financial statements and/or complete tax returns for each of the Proposer's (and its parent corporation, if applicable, or joint venture member or affiliate, if applicable) two (2) most recently ended fiscal years; and/or



- (b) If documentation under (a) is not available, provide other proof of financial assurance.

4. If Proposer is relying on financial resources other than items 1 through 3 above, then Proposer shall submit the following documentation with its Proposal:

- (a) Other proof of financial assurance.

4.6.3 If the information in Section 4.6.2 is not available at the time of submission, the Proposer shall provide other proof of financial responsibility acceptable to the Texas Lottery prior to the deadline for submission of Proposals.

4.6.4 The Texas Lottery reserves the right to require any additional information necessary to determine the financial integrity and responsibility of the Proposer.

4.6.5 The Proposal must include a certification to notify the Texas Lottery of a change in financial condition during the Contract term and any renewal thereof. If a Proposer experiences a substantial change in its financial condition during the period prior to the award of any Contract pursuant to the RFP, or if the Successful Proposer experiences a substantial change in its financial condition during the term of the Contract or any extension thereof, the Texas Lottery must be notified of the change in writing at the time the change occurs or is identified. Failure to notify the Texas Lottery of such substantial change in financial condition will be sufficient grounds for rejecting the Proposal or terminating any Contract. For the purposes of this section, examples of a substantial change in financial condition are:

- a. any net loss;
- b. cash flow loss from operations greater than or equal to ten percent (10%) during each fiscal quarter; or
- c. judgment in excess of \$100,000 which is not secured by insurance.

4.7 Background Investigations

4.7.1 The Texas Lottery Commission may initiate investigations into the backgrounds of (a) any Apparent Successful Proposer; (b) any of the Apparent Successful Proposer's



officers, directors, investors, owners, partners and other principals, as more particularly described in Texas Government Code § 466.155, (collectively, Apparent Successful Proposer Principals); (c) any of Apparent Successful Proposer's employees; (d) any of Apparent Successful Proposer's Subcontractors, or Subcontractors' officers, directors, investors, owners, partners, principals or employees (collectively, Subcontractor Personnel); or (e) any other associates of the Apparent Successful Proposer it deems appropriate. The Texas Lottery Commission may also request background information for a spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of the Apparent Successful Proposer, any Apparent Successful Proposer Principals, or Apparent Successful Proposer employees described above. Such background investigations may include fingerprint identification by the Texas Department of Public Safety and the Federal Bureau of Investigation, and any other law enforcement agency. The Texas Lottery may reject a Proposal and/or terminate any Contract resulting from this RFP based solely upon the results of these background investigations.

- 4.7.2 In order to facilitate the background investigations, the Apparent Successful Proposer, including the parent or subsidiary of the Apparent Successful Proposer, may need to complete and return:
- a. the Texas Lottery's Background Information Certified List of Vendor Principals Form (located in Attachment E) within three (3) business days after the written Announcement of the Apparent Successful Proposer by the Texas Lottery.
 - b. the Texas Lottery's Vendor Background Investigation Packet (Attachment E) within ten (10) business days after the written Announcement of the Apparent Successful Proposer by the Texas Lottery.

The Texas Lottery reserves the right to require additional background information.

- 4.7.3 The Successful Proposer agrees that, during the term of the Contract and any renewal thereof, it shall be obligated to provide such information about any Proposer Principals, Proposer employees, and Subcontractor Personnel as the Texas Lottery may prescribe.



The Successful Proposer also agrees that the Texas Lottery may conduct background investigations of such persons.



PART 5

GENERAL SCOPE OF SERVICES

5.1 General Information

This section describes general information and requirements that are applicable to all auditing services requested under this RFP.

5.2 Auditing Standards to be Followed

The Successful Proposer shall perform work in accordance with generally accepted auditing standards set forth by the AICPA and generally accepted government auditing standards promulgated by the Comptroller General of the United States, as applicable.

5.3 Conferences

5.3.1 The Successful Proposer shall hold the following conferences with the TLC Internal Audit Director, the State Auditor, and/or other appropriate TLC personnel as deemed necessary. The TLC Internal Audit Director may request minimum information to be presented at each conference.

- (a) Entrance conference at commencement of audit work;
- (b) Progress conferences as requested by either the TLC Internal Audit Director or the Successful Proposer;
- (c) Pre-exit conference(s), and
- (d) Exit conference at conclusion of audit work (to include an in-depth presentation of results).

5.3.2 Conferences entail the following:

- (a) Entrance Conference: At the Entrance Conference, the Successful Proposer will explain its approach to accomplish the audit, introduce its team that will be performing the work, and meet TLC employees that Successful Proposer will need to contact during its audit. In addition, the Successful Proposer will communicate its timetables and its audit plan. The Successful Proposer may also



make requests for reports, materials, and other agency data or access to resources to be provided. As appropriate, the Successful Proposer may also meet vendor employees it will need to contact during its audit. The entrance conference may also be used to clarify issues, as needed, at the beginning of the engagement.

- (b) **Progress Conferences:** Progress conferences may be held at either the request of the TLC Internal Audit Director or the Successful Proposer. Progress conferences are held to discuss the status of the audit work, any potential issues or findings, any difficulties or special problems, progress regarding meeting estimated or required timelines, and other issues as needed. If any matters come to the attention of the Successful Proposer that, in the Successful Proposer's judgment, may require immediate action, those matters shall immediately be brought to the attention of the TLC Internal Audit Director.
- (c) **Pre-Exit Conference(s):** After the work has been completed but before a written report is prepared, the Successful Proposer will brief the Executive Director, TLC Internal Audit Director, other designated TLC staff, and possibly TLC Commissioners on the results of the work performed, any issues or findings, and any proposed recommendations.
- (d) **Exit Conference:** The Successful Proposer will formally present the final results of its audit efforts to the Internal Audit Director, the Executive Director, other TLC staff as determined by the Internal Audit Director or the Executive Director, and possibly TLC Commissioners.

5.4 Follow-Up

The Successful Proposer shall perform follow-up review on any outstanding issues and recommendations made to management from relevant prior audits. The purpose of this review is to evaluate management's compliance and to address the adequacy of management's actions to address relevant issues raised in previous reports.



5.5 Deliverables and Reports

5.5.1 Deliverables -

- (a) All deliverables shall be provided in hard copy and via electronic (MS Word/Excel) format.
- (b) **Work Plan.** A formalized, detailed work plan and project schedule must be delivered to the TLC Internal Audit Director prior to performing any services as part of any Contract pursuant to this RFP. After review and approval by the TLC Internal Audit Director, the Successful Proposer will present and discuss the work plan and schedule with applicable TLC employees.
- (c) **Schedule of Estimated Hours and Resources.** At the request of the Texas Lottery's Internal Audit Director, the Successful Proposer must submit a detailed schedule of total estimated hours and a breakdown of estimated hours by position.
- (d) **Progress Reports.** At the request of the TLC Internal Audit Director, the Successful Proposer must submit the following:
 - i. The Successful Proposer shall submit written confidential progress reports to the TLC Internal Audit Director. The frequency shall not exceed more than once a week. Each progress report shall indicate the current status of the work being performed, any interim findings or issues, any difficulties or special problems, and progress regarding meeting estimated or required timelines.
 - ii. If any matters come to the attention of the Successful Proposer that, in the Successful Proposer's judgment, may require immediate action, those matters shall immediately be brought to the attention of the TLC Internal Audit Director, and shall be documented in the Successful Proposer's next scheduled progress report.



5.5.2 Reports -

- (a) **Draft Report.** The Successful Proposer shall present a draft written report of each of the final reports required under Parts 6 and 7 of this RFP to the TLC Internal Audit Director for review and comment before obtaining any management responses if needed, and prior to issuance of a final report.
- (b) **Final Report.** The Successful Proposer shall issue final reports as prescribed under Parts 6 and 7 of this RFP.

5.5.3 Other specific deliverables may be detailed in other sections of this RFP.

5.6 Timeline Requirements

- 5.6.1 The Successful Proposer must provide final draft reports, as required under 5.5.2(a), to the Internal Audit Director by November 30th for review.
- 5.6.2 TLC management will respond to the draft reports by December 7th, in time for the Successful Proposer to prepare final changes and provide final reports to the Texas Lottery Commission by December 14th.
- 5.6.3 Other timeline requirements may be detailed in other sections of this RFP.

5.7 Proposed Changes by the Successful Proposer

Any modifications to the timetables, budgets, staffing, report presentation or other changes by the Successful Proposer must be presented to and receive prior written approval from the TLC Internal Audit Director.

5.8 Presentation of Results

In addition to the exit conference, the Successful Proposer may be asked to present audit results to the Commissioners at the next available Commission meeting and/or, if necessary, individually to each Commissioner.



5.9 Assistance Available to Auditors

Work space will be made available to accommodate the auditors at Texas Lottery Commission's headquarters at 611 E. 6th Street, Austin, Texas 78701. Appropriate Lottery and vendor employees will cooperate with the Successful Proposer by preparing schedules, producing supporting documents, and providing other assistance as needed.

5.10 Accessibility

5.10.1 The Successful Proposer shall have full and free access to all activities, records, property, and personnel of the agency, and of its contractors and subcontractors as necessary in order to meet its audit objectives.

5.10.2 The Successful Proposer shall have full and free access to the Commissioners to discuss any matters that, in the Successful Proposer's judgment, would be more appropriately addressed directly with a Commissioner. In these instances, the Successful Proposer may use its judgment to determine whether the TLC Internal Audit Director should be apprised of such communications.

5.11 Successful Proposer's Responsibility for Work Paper Retention and Availability

5.11.1 The Successful Proposer shall retain all work papers and reports, at the Successful Proposer's expense, for a minimum of seven (7) years after final payment under the Contract unless the Successful Proposer is notified in writing by the Lottery of the need to extend the retention period.

5.11.2 The Successful Proposer shall make all work papers available for examination by the State Auditor's Office, who is responsible for expressing an opinion regarding the fairness of presentation of the State's financial statements. It may be necessary for the Successful Proposer to confer with the State Auditor's Office in relation to the statewide audit, or other audits conducted by the State Auditor's Office.

5.11.3 The work papers prepared by the Successful Proposer as a result of performing the Contract will remain the Successful Proposer's property although copies thereof



including electronic copies and access thereto must be made available to the TLC Internal Audit Director or the Internal Audit Director's designee upon request. The Successful Proposer shall cooperate with other or subsequent independent auditors retained by the Texas Lottery during or after the term of the contract upon specific request of the Texas Lottery. This provision shall remain in effect for a period of seven (7) years after final payment under the Contract. The Successful Proposer must make personnel available upon request to explain all data, materials, and working papers during such a review at any reasonable time. "Reasonable time" means during normal business hours.

5.12 Additional Professional Services

5.12.1 After the conclusion of the provision of the auditing services required by this RFP and any Contract resulting therefrom, the Successful Proposer may be called upon to assist Lottery management with advice and counsel. The Lottery may need to consult with appropriate persons on the Successful Proposer's staff for short periods of time ranging from less than an hour to perhaps a couple of days. The services needed might include, for example, advice and assistance on an on-going basis relating to the internal controls of the Lottery's functions, or additional audit services. Billings for such services should be at the standardized rates submitted with the firm's or individual's cost proposal. The individuals authorized to engage the Successful Proposer for these services will be named in the Contract negotiated as a result of this RFP.

5.12.2 All additional services provided by the Successful Proposer shall be approved by the TLC Internal Audit Director prior to performance of such services.

5.13 Right to Use, Copy and Disseminate Reports and Data

The Texas Lottery reserves the right to use and reproduce all reports and data produced by the Successful Proposer hereunder and to disseminate the same.



5.14 Communication

In order to enhance communication and sharing of information, the Successful Proposer's word processing, spreadsheet, presentation, project management and e-mail applications must be compatible with Texas Lottery applications.



PART 6

SCOPE OF SERVICES FOR ANNUAL FINANCIAL AUDIT

6.1 Background Information

6.1.1 General Texas Lottery Information.

- (a) The Texas Lottery Commission has existed since 1992. It operates and regulates the Texas Lottery and regulates Charitable Bingo in the State of Texas. The Texas Lottery Commission's headquarters are located in Austin, Texas. It has one warehouse, various storage units throughout the state, and multiple field staff working from field office locations. The Commission's organizational structure includes a standard complement of divisions (Executive, Administration, Legal, Office of the Controller, etc.). In addition, the Lottery Division is comprised of the following departments: Advertising and Promotions, Drawings and Validations, Retailer Services, Products and Security; and the Charitable Bingo Operations Division is comprised of the following departments: Audit Services, Accounting Services and Licensing Services. The Texas Lottery has approximately three hundred and thirty (330) full-time equivalent employees.
- (b) As an agency of the State of Texas, the Texas Lottery Commission is subject to the acts of the Texas Legislature. The Lottery operates under a Proprietary Fund Type as an Enterprise Fund, and Charitable Bingo operates under a Governmental Fund Type using the General Fund. The agency budget is prepared biennially and represents appropriations authorized by the Legislature and approved by the Governor (the General Appropriations Act). The agency creates an internal operating budget for Lottery and Charitable Bingo activities that is based on the funding approved. Encumbrance accounting is employed for budgetary control purposes only, for both the General Fund and the Enterprise Fund.
- (c) The Uniform Statewide Accounting System (USAS) is the Official Financial Reporting System for the State of Texas and is administered by the Texas



Comptroller of Public Accounts. All disbursements by the Lottery are made through USAS with the exception of travel advances, investigative fund disbursements, prizes and annuity payments. The Lottery currently sends Accounts Payable transactions entered into its financial system to USAS via File Transfer Protocol (FTP) for processing. The purchase request process is an automated process. A requisition is created in the requisition system and routed through all members of the decision tree for review and approval. After receiving Division Director approval, it is routed to the Office of the Controller, where it is reviewed for proper account coding and funds availability. From the Office of the Controller it is forwarded to the Purchasing and Contracts Department where a purchase order is issued.

- (d) The Lottery Operator, currently GTECH, provides a lottery gaming system known as ProSys, which interfaces with an Internal Control System (ICS). The ICS system interfaces with and posts all gaming-related accounting information to the Lottery's internal financial system. ProSys is an integrated system that performs all Lottery functions, including, but not limited to: sales, validations, inventory and retailer management, retailer accounting, billing and reporting, claims processing and payment, marketing support, and reporting.
- (e) Other areas of significant importance to the audit scope include prizes payable processing, including validations of and payment of prizes; instant ticket inventory control and valuation; accounting for retailer accounts receivables; and management of the investment portfolio held for the payment of annuity prizes. All these functions involve cross-divisional responsibilities and make up a large volume of the agency's assets and liabilities. These functions involve the Lottery Operations Division, administrative divisions and Office of the Controller; each playing a significant role in the control structure for each activity.



- (f) Organizational charts will be provided to the Successful Proposer, after Contract execution.

6.1.2 Accounting Fund Structure.

- (a) **Basis of Presentation.** The financial statements for the Texas Lottery Commission are prepared in conformance with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB).
- (b) Financial reporting for the Lottery is based on all GASB pronouncements, as well as the Financial Accounting Standards Board (FASB) Statements and Interpretations, the Accounting Principles Board (APB) Opinions, and Accounting Research Bulletins issued on or before November 30, 1989, that do not conflict with or contradict GASB pronouncements. FASB pronouncements issued after November 30, 1989, are not followed in the preparation of the financial statements.
- (c) **No Blended or Discrete Component Units.** No component units, which under GASB Statement No. 14 would be required to be blended into an appropriate fund or presented in discrete columns, have been identified.”
- (d) **Cash and Cash Equivalents.** For the purposes of the statement of cash flows, the Commission considers cash and cash equivalents to be Cash in Bank and Cash in Treasury.
- (e) **Fund Structure.** The Commission records its transactions in three fund types as described below.

The **General Fund (Governmental Fund Type)** is used to account for all financial resources of the Commission except those required to be accounted for in another fund. The General Fund is used to account for operations of the Charitable Bingo Operations Division, which uses the modified accrual basis of accounting.



The **Enterprise Funds (Proprietary Fund Type)** are used to account for operations financed and operated in a manner similar to a private business. The intent is to recover costs through user charges or to determine periodically if revenues earned, expenses incurred, and/or net income is appropriate for management control, accountability and other purposes. The Lottery operations and investment activities are accounted for in Enterprise Funds, which use the accrual basis of accounting.

- a. **Lottery Fund** – Enterprise – This fund is used to record all transactions related to the operation of the State Lottery.
- b. **Lotto Prize Trust** – Enterprise – This fund is used to account for investments purchased by the Texas Lottery Commission to meet future installment obligations to prize winners. In prior fiscal years this fund was reported as an Agency Fund. Due to the implementation of GASB 31, the presentation was changed in fiscal year 1998.

The **Agency Funds (Fiduciary Fund Type)** are used to account for assets held as an agent for individuals, other government entities, and/or other funds. These funds are custodial in nature and do not involve measurement of results of operations. Fiduciary funds are reported using the economic resources measurement focus.

6.2 Specific Deliverables and Requirements Associated with the Annual Financial Audit

- 6.2.1 **Audit Period.** The focus period of audit services requested is for fiscal year 2010 (September 1, 2009 – August 31, 2010). Any options to renew will be for subsequent fiscal years.
- 6.2.2 **Scope of the Audit.** The scope of the audit should be one that allows the Successful Proposer to render an opinion on the basic financial statements of the Lottery Commission.



- (a) The Successful Proposer must determine whether the financial statements of TLC present fairly, in all material respects, the financial position of the governmental activities, the business-type activities, and each major fund and fiduciary fund, as well as the respective changes in financial position and cash flows, where applicable, in conformity with accounting principles generally accepted in the United States of America.
- (b) The Successful Proposer must test internal control over financial reporting and compliance with laws, regulations, and provisions of contracts.
- (c) As part of the audit, the Successful Proposer will review and evaluate controls over the year-end physical inventory of instant tickets, and the end of game destruction of instant tickets that takes place at an Austin location over a period of approximately one to three days.
- (d) The audit must be unlimited in scope so that it covers all operations and activities of the Texas Lottery Commission in such a way that the audit report addresses TLC's financial statements taken as a whole.

6.2.3 Report Requirements. The Successful Proposer will prepare, print and sign the following reports and letters in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States:

- (a) Independent auditor's report (opinion letter) on TLC's financial statements
- (b) Independent auditor's report on internal control over financial reporting and on compliance and other matters based on an audit of the financial statements performed in accordance with *Government Auditing Standards*.
- (c) Management Letter reporting on opportunities to strengthen internal controls and increase operating efficiencies, including recommendations to enhance the earnings capability of the Lottery, if applicable.



6.2.4 **Distribution of Reports.** The Successful Proposer shall deliver final reports to the TLC Internal Audit Director. The Successful Proposer must also include a letter indicating approval for the Texas Lottery Commission to distribute and publish those reports as necessary by statutory requirements.



PART 7

SCOPE OF SERVICES FOR MEGA MILLIONS AGREED-UPON PROCEDURES ENGAGEMENT

7.1 Background Information

- 7.1.1 The 78th Legislature passed House Bill 3459, which included a provision authorizing the Commission to participate in a multi-jurisdiction lottery game. The Commission entered into an agreement with the Mega Millions group on October 16, 2003 to participate in the multi-jurisdiction lottery game and became the eleventh state to join. On December 3, 2003 the Texas Lottery Commission commenced the sales of Mega Millions on-line lottery game tickets. (Subsequently, the California Lottery joined the Mega Millions group in June 2005 to become the twelfth state to join.)
- 7.1.2 The Audit Requirements agreed to by all states participating in Mega Millions require the Mega Millions transactions, accounts and processes for each respective Member Lottery to be verified, according to agreed-upon standards, on an annual basis by an independent certified public accountant or the State Auditor General or comparable office within each Member Lottery's jurisdiction. The scope of the audit includes the performance of these agreed-upon procedures. The results of these agreed-upon procedures are shared with each Member Lottery.

7.2 Specific Deliverables and Requirements Associated with the Mega Millions Agreed Upon Procedures Engagement

- 7.2.1 **Period Covered.** The focus period of services requested is from April 1, 2009 through March 31, 2010. Any options to renew will be for subsequent periods.
- 7.2.2 **Procedures Required:**
- (a) Obtain from the Texas Lottery Commission the "Draw Activity" and the "Fixed Prize Analysis" for the period covered (example: April 1, 2009 through March 31, 2010) and attach those as Exhibits I and II, respectively. Prove the mathematical accuracy of the schedules and note any exceptions.



- (b) Randomly select five (5) draw dates from the period (as agreed to by Member Lotteries).
- (c) For each draw date selected in step “b” above, compare the total amount of sales as shown on the daily sales report produced by Texas Lottery Commission’s gaming system and the total amount of sales shown on the related daily sales report produced by Internal Control System (“ICS”), with the balance listed in the “sales” column for the respective draw date on the “Draw Activity” report attached as Exhibit I and ensure they are in agreement.
- (d) Calculate the total dollar amount of the fixed prizes for the draw dates selected in step “b” above, based on the total number of winners from the Texas Lottery Commission’s gaming system for each prize level and the prize structure of the Mega Millions’ fixed prizes (as defined in the official game rules). Compare the calculated expense with the amount listed in the “Actual Fixed Prizes” column for the respective draw date on the “Draw Activity” report attached as Exhibit I and ensure they are in agreement.
- (e) For each draw date selected in step “b” above, compare the amount of sales, actual fixed prizes, and share of fixed prizes shown on the “Draw Activity” report attached as Exhibit I to the amounts shown on the applicable Mega Millions Prize Settlement Reports and ensure they are in agreement.
- (f) For the period identified, randomly select two months and obtain the “Expired Prize Settlement Report” distributed by the Virginia Lottery. For the two months selected, obtain from the Texas Lottery Commission Internal Control System (ICS) the actual fixed prizes awarded, and the prizes unclaimed. Compare the ICS data back to the data reported from the Virginia Lottery for each draw of the subject months to ensure they are in agreement.
- (g) Compare the amounts shown as the total of the actual fixed prizes and the total of the share of fixed prizes on the “Draw Activity” report attached as Exhibit I to the



applicable amounts shown on the “Fixed Prize Analysis” report attached as Exhibit II and ensure they are in agreement.

- (h) For the amount (if any) listed in the “Cost of the Jackpot Prizes” column of the “Draw Activity” report attached as Exhibit I, obtain and compare the “cost of the jackpot prize” amount to the Texas Lottery Commission’s cash disbursement subsidiary records which summarize the funds disbursed to the prize winner and/or the broker from which the jackpot annuities were purchased and verify agreement.
- (i) For each purchase (if any) of investments associated with the jackpot prizes:
 - (1) Review broker confirmations to verify that investments are funded in accordance with allowed investment vehicles per the multi-state rules, regulations or procedures; and
 - (2) Obtain the bid sheets and supporting documentation and verify the investments were purchased through a competitive bidding process involving a minimum of three brokerage firms.
- (j) Obtain the Security Purchase report which lists the results of the security purchase and verify that the information reported to the group is accurate, including the annuity factor for the non-winning bidders.
- (k) Compare the total of the period transfers from the Texas Lottery Commission to the Virginia Lottery for settlement of the fixed prize liability as shown in the Texas Lottery Commission’s cash disbursement subsidiary records to the amount listed in the “Qtrly/Yrly Settlements Transfers In (Out)” column on the “Fixed Prize Analysis” report attached as Exhibit II and ensure they are in agreement.
- (l) Compare the balance listed as the Texas Lottery Commission’s receivable as of March 31, 2010 for the fixed prizes as shown on the “Fixed Prize Analysis” report



attached as Exhibit II to the Texas Lottery Commission's financial accounting records and to the Mega Millions Prize Settlement Report as of March 31, 2010 and ensure they are in agreement.

(m) Dates and periods covered will be adjusted accordingly for any options to renew.

- 7.2.3 **Report Requirements.** The Successful Proposer will prepare, print and sign the final report, and any letter, on the agreed-upon procedures in accordance with attestation standards established by the American Institute of Certified Public Accountants.
- 7.2.4 **Distribution of Reports.** The Successful Proposer shall deliver a final report to the TLC Internal Audit Director. The Successful Proposer must also include a signed letter indicating approval for the Texas Lottery Commission to distribute and publish the report as required by the Mega Millions agreement documents and statutory requirements.



ATTACHMENT A PROPOSER'S COMMITMENT

I hereby commit _____

(Company Name)

to provide the goods and services described in the attached Proposal for Audit Services as required by the Request for Proposals for the Texas Lottery Commission.

Signature: _____

Title: _____

Date: _____



ATTACHMENT B

FINANCIAL COMMITMENT AND RESPONSIBILITY

This financial commitment and responsibility statement is to be completed by the parent corporation's chief financial officer.

_____ is a fully-owned subsidiary of
(Subject)

_____ and that as such _____
(Parent) (Parent)

is fully responsible for any and all financial obligations of

_____ up to _____.
(Subject) (Dollar Value)

Signature: _____

Title: _____

Date: _____



ATTACHMENT C
POLICY ON THE UTILIZATION OF HISTORICALLY UNDERUTILIZED
BUSINESSES (HUBS)

In accordance with Texas Government Code §§2161.181-182 and §466.107, and with the Texas Lottery Commission's adopted rules, Texas Administrative Code, §403.301, relating to Historically Underutilized Businesses (HUBs), state agencies shall make a good faith effort to utilize HUBs in contracts for construction, services, including professional and consulting services, and commodity contracts. The Commission has adopted the Comptroller of Public Account's (CPA) HUB Rules as its own rules, and encourages the use of HUBs by implementing these policies through race, ethnic, and gender neutral means. The Commission is committed to promoting full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:

- (1) *11.9% for heavy construction other than building contracts;
- (2) *26.1% for all building construction, including general contractors and operative builders contracts;
- (3) 57.2% for all special trade construction contracts;
- (4) 20% for professional services contracts;
- (5) 33% for all other services contracts; and,
- (6) 12.6% for commodities contracts.

* Heavy Construction and Building Construction categories/goals are not applicable to the Lottery Commission's operations. Currently, the Commission does not have programs or strategies related to these categories.

The Commission and its contractors shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the Commission expects to award in a fiscal year. It is the policy of the Commission to accomplish these goals either through contracting directly with HUBs or indirectly through subcontracting opportunities. The Commission's policy on the utilization of HUBs and minority businesses is related to all contracts with an expected value of \$100,000 or more, and whenever possible, in contracts less than \$100,000.

The Texas Government Code defines a historically underutilized business as an entity with its principal place of business in the State of Texas, which is certified by the Comptroller of Public Accounts (CPA). The CPA's HUB Rule §111.12, defines a HUB as:

A business with its principal place of business in Texas in which the owner(s) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and are economically disadvantaged because of their identification as members of the following groups: Black Americans, Hispanic Americans, American Women, Asian Pacific Americans, or Native Americans.



The Comptroller of Public Accounts will certify those eligible businesses that apply for HUB certification under the following business structures and defined ownership:

- a) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or equitable securities are owned by one or more person(s) identified above;
- b) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person identified above;
- c) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons identified above;
- d) a joint venture in which each entity in the joint venture is a HUB;
- e) a supplier contract between a historically underutilized business and a prime contractor/vendor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; and
- f) a business which is formed for the purpose of making a profit which is otherwise a legally recognized business organization (i.e. Limited Liability Companies/Corporations, Limited Liability Partnerships) under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more persons identified above.



ATTACHMENT D
V.T.C.A., GOVERNMENT CODE § 466.155

(a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

(1) is an individual who:

(A) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(B) is or has been a professional gambler;

(C) is married to an individual:

(i) described in Paragraph (A) or (B); or

(ii) who is currently delinquent in the payment of any state tax;

(D) is an officer or employee of the commission or a lottery operator; or

(E) is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person described by Paragraph (D);

(2) is not an individual, and an individual described in Subdivision (1):

(A) is an officer or director of the applicant or sales agent;

(B) holds more than 10 percent of the stock in the applicant or sales agent;

(C) holds an equitable interest greater than 10 percent in the applicant or sales agent;

(D) is a creditor of the applicant or sales agent who holds more than 10 percent of the applicant's or sales agent's outstanding debt;

(E) is the owner or lessee of a business that the applicant or sales agent conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent; or

(G) participates in managing the affairs of the applicant or sales agent;

(3) has been finally determined to be:

(A) delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

(B) in default on a loan made under Chapter 52, Education Code; or

(C) in default on a loan guaranteed under Chapter 57, Education Code;

(4) is a person whose location for the sales agency is:

(A) a location licensed for games of bingo under Chapter 2001, Occupations Code;

(B) on land that is owned by:

(i) this state; or

(ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or

(C) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code; or

(5) has violated this chapter or a rule adopted under this chapter.



- (b) If the director proposes to deny an application for a license or the commission proposes to suspend or revoke a license under this section, the applicant or sales agent is entitled to written notice of the time and place of the hearing. A notice may be served on an applicant or sales agent personally or sent by certified or registered mail, return receipt requested, to the person's mailing address as it appears on the commission's records. A notice must be served or mailed not later than the 20th day before the date of the hearing. The commission shall provide for a formal administrative hearings process.
- (c) At a hearing, an applicant or sales agent must show by a preponderance of the evidence why the application should not be denied or the license suspended or revoked.
- (d) The director shall give an applicant or sales agent written notice of a denial of an application or a suspension or revocation of a license.
- (e) The director may not issue a license to a person who has previously had a license under this chapter revoked unless the director is satisfied the person will comply with this chapter and the rules adopted under this chapter. The director may prescribe the terms under which a suspended license will be reissued.
- (f) The director may not issue a license to an applicant who fails to certify to the director the applicant's compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).
- (g) For purposes of Subsection (a)(3), the comptroller, Texas Workforce Commission, Texas Alcoholic Beverage Commission, Texas Higher Education Coordinating Board, and Texas Guaranteed Student Loan Corporation shall each provide the executive director with a report of persons who have been finally determined to be delinquent in the payment of any money owed to or collected by that agency. The commission shall adopt rules regarding the form and frequency of reports under this subsection.

Added by Acts 1993, 73rd Leg., ch. 107, § 4.03(b), eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 6.21, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 696, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1275, § 51, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 394, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, § 14.760, eff. Sept. 1, 2001.



ATTACHMENT D-1
BACKGROUND INFORMATION CERTIFICATION
TEXAS GOVERNMENT CODE §466.155

Pursuant to Texas Government Code §466.103, the Executive Director of the Texas Lottery Commission may not award a contract for the purchase or lease of facilities, goods or services related to lottery operations to a person who would be denied a license as a sales agent under Texas Government Code §466.155.

(Company Name)

certifies that it has reviewed Texas Government Code §466.155 and that it would not be denied a license as a sales agent pursuant to said section.

(signature of person authorized to contractually bind the Proposer)

(printed name)

(title)

(date)



ATTACHMENT E
VENDOR BACKGROUND INVESTIGATION FORM
APPARENT SUCCESSFUL PROPOSER

Section 466.103 of the Texas Government Code states that the Executive Director may not award a Contract to a person who would be denied a license as a sales agent under section 466.155 of the Texas Government Code.

FOR ASSISTANCE

Please call the Enforcement Division of the Texas Lottery at 512-344-5000.

GENERAL INSTRUCTIONS

- Type or print all information.
- The Apparent Successful Proposer, including the parent or subsidiary of the Apparent Successful Proposer, shall complete and return this form.
- The Texas Lottery is authorized to obtain criminal history records from the Texas Department of Public Safety, the Federal Bureau of Investigation or any other law enforcement agency.
- This form is open to public inspection during normal business hours as required by the Texas Public Information Act, Tex. Govt. Code Ann., §552.021.

SALES AGENT ELIGIBILITY REQUIREMENTS

The following people are prohibited from holding a Texas Lottery Ticket Sales License:

1. Persons convicted of a felony, criminal fraud, gambling or a gambling-related offense whose sentence, parole, mandatory supervision or probation ended less than 10 years ago.
2. Persons convicted of a misdemeanor involving moral turpitude whose sentence, parole, mandatory supervision or probation ended less than 10 years ago.
3. Persons who are or have been professional gamblers.
4. Persons currently delinquent in the payment of certain state taxes or student loans.
5. The spouses of those people named above.

Also, a business is prohibited from holding a Texas Lottery Ticket Sales License if that business included a person identified in items 1-5 above and that person:

- is an officer or director of that business;
- holds 10 percent or more of the stock in that business;
- holds an equitable interest greater than 10 percent in that business;
- is owed more than 10 percent of the business's debt;
- owns or leases a business through which the applicant will conduct ticket sales;
- will share in the profits of that business (not including stock dividends); or
- participates in managing the affairs of the applicant or sales agent.



**TEXAS LOTTERY COMMISSION
Vendor Background Investigation**

OWNERSHIP INFORMATION FOR APPARENT SUCCESSFUL PROPOSER

1. Corporation or Legal Business Name:	
2. Business Ownership (check one):	☐ Sole Owner ☐ Partnership ☐ Texas Corporation ☐ Foreign Corporation ☐ Other (explain) _____
3. If Texas Corporation, enter:	Charter Number: _____ Charter Date (MM/DD/YYYY): ____/____/____
4. If your business is a foreign corporation, enter:	Home State: _____ Charter Number: _____ Texas Certificate of Authority Number: _____ Texas Certificate of Authority Date (MM/DD/YYYY): ____/____/____
5. If limited partnership, enter:	Home State: _____ Identification Number: _____
6. Federal Employer's Identification (FEI) Number, if any:	_____
7. Taxpayer number for reporting any Texas tax OR your Texas Vendor Identification Number if you now have, or have ever had, one.	_____



ELIGIBILITY STANDARDS

An individual is not eligible for a sales license if:

- a. The individual or the individual's spouse has been convicted of a felony, criminal fraud, gambling or a gambling-related offense or a misdemeanor involving moral turpitude and less than 10 years have passed since the end of the sentence, parole, mandatory supervision or probation served for the conviction.
- b. The individual or the individual's spouse is a professional gambler.
- c. The individual's spouse is currently delinquent in the payment of any state tax.
- d. The individual is an officer or employee of the Texas Lottery Commission or a Texas Lottery operator.
- e. The individual's spouse, child, brother, sister or parent (1) lives in the same principal place of residence as the individual and (2) is an officer or employee of the Texas Lottery Commission or a Texas Lottery operator.
- f. The individual is delinquent in the payment of a tax or other money collected by the Texas Comptroller of Public Accounts, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission; in default on a loan made under Chapter 52 of the Texas Education Code; or in default on a loan guaranteed under Chapter 57 of the Texas Education Code.

An entity is not eligible for a sales license if any of the following individuals would be ineligible for a sales license under item a, b, c, d or e above:

- An officer or director of the entity;
 - An individual who holds more than 10 percent of the stock in the entity;
 - An individual who holds an equitable interest greater than 10 percent in the entity;
 - The creditor of the entity who holds more than 10 percent of the entity's outstanding debt;
 - The owner or lessee of a business conducted by the entity or through which the entity will conduct a ticket sales agency;
 - An individual who shares or will share in the profits, other than stock dividends, of the entity; or
 - An individual who participates in managing the affairs of the entity.

An applicant is not eligible for a sales license if the proposed ticket sales location is:

- A location licensed for games of bingo, or
- On land that is owned by:
 - This state, or
 - On which is located a public primary or secondary school, an institution of higher education, or an agency of the state.



By signing below, I certify that the information provided on this form is correct to the best of my knowledge and _____ [company name] _____ is not ineligible for a sales license under the eligibility standards described above. I understand that providing false or incomplete information may be grounds for termination of any contract. _____ [company name] _____ has read and agrees to abide by the requirements of section 466.155 of the Texas Government Code. I understand that owners/officers/partners/directors, as designated by the Texas Lottery, must furnish a complete legible set of fingerprints, and that failure to do so will result in the termination of any contract. The Texas Lottery is authorized to obtain criminal history records.

sign
here

_____	_____	_____
Signature of person authorized to contractually bind Proposer	Title	Date

Corporation or Legal Business Name



**BACKGROUND INFORMATION
CERTIFIED LIST OF VENDOR PRINCIPALS**

The following is a list of vendor principals for _____ (Company Name)

as defined by Texas Government Code §466.155.

Vendor Principals as defined by Texas Government Code § 466.155 (attach additional sheets if necessary):

List of Vendor Principals directly involved in performing the services that are the subject of the contract entered into as a result of this RFP, this includes any oversight function performed by a vendor principal (attach additional sheets if necessary):

(signature of person authorized to contractually bind the Proposer)

(title)

(printed name)

(date)



TEXAS LOTTERY COMMISSION
Consent to Release Personal Information

NOTE: All Vendor Principals directly involved in performing the services that are the subject of the contract entered into as a result of the RFP, including those performing any oversight function, must complete a Consent to Release Personal Information form.

TO THE APPLICANT: All persons Contracting with the Texas Lottery Commission must meet the requirements of the Texas Government Code § 466.155 (Print or type all information in blue or black ink):

1. Name (First, middle initial, last):	
2. Social Security Number:	__ __ __ - __ __ - __ __ __ __
3. Home address (Street & number, P.O. Box or Rural Route and box number):	
4. City, State, Zip:	City: _____ State: _____ Zip: _____
5. Home Phone:	() __ __ __ - __ __ __ __
6. Driver License (state and number):	State:[__ __] Number: __ __ __ __ __ __ __ __
7. Date of Birth (MM/DD/YYYY):	__ / __ / __ __ __

I understand and agree that:

I hereby give my voluntary consent to any investigation or any other inquiry into information described above. Further, I hereby consent to the release of any information, to the Texas Lottery Commission, Enforcement Division, or persons conducting an investigation or inquiry on their behalf. I understand that certain information obtained through this investigation or inquiry may prevent me from Contracting with the Texas Lottery Commission.

I further hold harmless and release the Texas Lottery Commission, its agents, officers or employees, from any and all liability for this investigation or inquiry, and for any action taken as a result of information obtained through this investigation or inquiry. I further hold harmless and release any person providing information in good faith to the Texas Lottery Commission or to any person conducting an investigation or inquiry on their behalf.



I further understand that any person or employee who intentionally, knowingly, or with criminal negligence makes a material incorrect or deceptive oral or written statement to a person conducting an investigation commits a misdemeanor.

Applicant's Signature

Date

STATE OF _____

COUNTY OF _____

Sworn and subscribed to before me this

_____ day of _____, 200__

Signature of Notary Public

Printed Name of Notary Public

My Commission Expires: _____



ATTACHMENT F SAMPLE PERFORMANCE BOND

Bond No. _____

[company name, address], as Principal, and [surety company], a corporation licensed to do business in the State of Texas and admitted to write bonds, as Surety, are held and firmly bound unto the Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, as Obligee, in the full sum of [written amount] Dollars (\$) for the payment of which said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors, assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written Contract with Obligee dated the ____ day of _____, _____, for [type of services], which Contract is hereby referred to, as if fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that, if during the term of this Contract (or annual bond), the Principal shall faithfully perform such Contract, or shall indemnify and save harmless the Obligee from all cost and damage by reason of Principal's failure to do so, then this obligation shall be null and void, otherwise it shall remain in full force and effect.
(If annual bond, add this paragraph.)

The term of this obligation is for the period commencing on _____ and expiring at 12:00 a.m. on _____. This bond may be renewed on an annual basis at the option of the surety. If the surety does not choose to renew this obligation, it will so notify the Obligee and Principal not later than 30 days prior to its expiration.

IN WITNESS WHEREOF, the Principal and Surety have signed and sealed this instrument this ____ day of _____, _____.

(seal) Principal: _____

By: _____

(seal) Surety: _____

By: _____

Attorney-in-Fact



ATTACHMENT G SCORING MATRIX

Audit Services RFP	Possible Points	% of Total	Points Awarded
The Proposer's price to provide the goods or services	200	20%	
Cost Proposal Subtotal	200	20%	
The probable quality of the offered goods and/or services.	350	35%	
The agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering:			
The quality of the Proposer's past performance in contracting with the Texas Lottery Commission, with other state entities, or with private sector entities.	200	20%	
The qualifications of the Proposer's personnel.	125	12.5%	
The experience of the Proposer in providing the requested goods or services.	125	12.5%	
The financial status of the Proposer.	Pass/Fail	n/a	
Evidence of active license issued by the Texas State Board of Public Accountancy.	Pass/Fail	n/a	
Technical Response Subtotal	800	80%	
TOTAL	1000	100%	

The following formula will be used in scoring cost proposals:

$$\text{Lowest Cost Proposal Amount} / \text{Other Cost Proposal Amount} = \% \text{ of total points available for the Cost Proposal.}$$



ATTACHMENT H COST PROPOSAL

PROPOSER'S NAME: _____

NOTE TO ALL PROSPECTIVE PROPOSERS: THE COST PROPOSAL MUST BE SUBMITTED IN A SEPARATE SEALED ENVELOPE AS AN ATTACHMENT TO THE ORIGINAL PROPOSAL.

TLC WILL NOT PAY FOR ANY CHARGES OR OTHER ITEMS NOT INCLUDED IN THE COST PROPOSAL. FEES SHOULD BE INCLUSIVE OF ALL COSTS OF DOING BUSINESS UNDER ANY CONTRACT RESULTING FROM THIS RFP. PROPOSERS SHOULD CONSIDER BOTH DIRECT AND INDIRECT COSTS; FOR EXAMPLE, TRAVEL, SALARIES, OVERHEAD, ANY EQUIPMENT OR SUPPLIES, AND ANY REQUIRED BONDS AND INSURANCE.

Annual Financial Audit Sealed Cost Proposal (RFP Part 6)

***Total Professional Fee including all direct and indirect costs \$ _____
(for initial term of contract only)***

Proposers must include the following detail information which is totaled into the "Total Professional Fee" including all direct and indirect costs."

Note:

- a.** List services/responsibilities to be assigned to this person. (List general functions such as "test of internal controls", "preparing financial schedules", etc.)
- b.** For "***Title***" use Proposer's working title for this position (such as Partner, Manager, Computer Specialist, Staff, etc.)
- c.** List each person's billable hourly rate.
- d.** List each person's hours needed on this engagement.

**Initial Term of Contract -**

Directions: - Complete all boxes below. Note: All columns below must be completed for each project member assigned to this financial audit.

List of Project Members & the services they will perform under the Financial Audit			Total Hours for all Project Members: _____	
Financial Audit Services (a)	Individual's Name	Title (b)	Hourly Rate (c)	Hours (d)

Year 1 Renewal - Annual Financial Audit Sealed Cost Proposal (RFP Part 6)

Total Professional Fee including all direct and indirect costs for Year 1 Renewal only \$ _____

Directions: - Complete all boxes below for each project position assigned to this financial audit. Actual names to be provided upon renewal of contract by the Texas Lottery.

List of Project Positions & the services they will perform under the Financial Audit		Total Hours for all Project Positions: _____	
Financial Audit Services (a)	Title (b)	Hourly Rate (c)	Hours (d)

**Year 2 Renewal - Annual Financial Audit Sealed Cost Proposal (RFP Part 6)**

Total Professional Fee including all direct and indirect costs for Year 2 Renewal only \$_____

Directions: - Complete all boxes below for each project position assigned to this financial audit. Actual names to be provided upon renewal of contract by the Texas Lottery.

List of Project Positions & the services they will perform under the Financial Audit		Total Hours for all Project Positions:_____	
Financial Audit Services (a)	Title (b)	Hourly Rate (c)	Hours (d)

Year 3 Renewal - Annual Financial Audit Sealed Cost Proposal (RFP Part 6)

Total Professional Fee including all direct and indirect costs for Year 3 Renewal only \$_____

Directions: - Complete all boxes below for each project position assigned to this financial audit. Actual names to be provided upon renewal of contract by the Texas Lottery.

List of Project Positions & the services they will perform under the Financial Audit		Total Hours for all Project Positions:_____	
Financial Audit Services (a)	Title (b)	Hourly Rate (c)	Hours (d)

**Mega Millions Agreed-Upon Procedures Cost Proposal (RFP Part 7)**

Total Professional Fee including all direct and indirect costs \$ _____
(for initial term of contract only)

Proposers must include the following detail information which is totaled into the “Total Professional Fee” including all direct and indirect costs.”

Initial Term of Contract -**Directions:**

Complete all boxes below. Note: All columns below must be completed for each project member assigned to the Mega Millions Agreed-Upon Procedures.

List of Project Members & the services they will perform under the Mega Millions Agreed-Upon Procedures

Total Hours for all Project Members _____

**Mega Millions
Agreed Upon
Procedures (a)**

Individual's Name

Title (b)

**Hourly
Rate (c)**

Hours (d)

**Year 1 Renewal -Mega Millions Agreed-Upon Procedures Cost Proposal (RFP Part 7)**

Total Professional Fee including all direct and indirect costs for Year 1 Renewal only \$_____

Directions: - Complete all boxes below for each project position assigned to the Mega Millions Agreed-Upon Procedures. Actual names to be provided upon renewal of contract by the Texas Lottery.

List of Project Positions & the services they will perform under the Mega Millions Agreed-Upon Procedures		Total Hours for all Project Positions:_____	
Mega Millions Agreed Upon Procedures (a)	Title (b)	Hourly Rate (c)	Hours (d)

Year 2 Renewal - Mega Millions Agreed-Upon Procedures Cost Proposal (RFP Part 7)

Total Professional Fee including all direct and indirect costs for Year 2 Renewal only \$_____

Directions: - Complete all boxes below for each project position assigned to the Mega Millions Agreed-Upon Procedures. Actual names to be provided upon renewal of contract by the Texas Lottery.

List of Project Positions & the services they will perform under the Mega Millions Agreed-Upon Procedures		Total Hours for all Project Positions:_____	
Mega Millions Agreed Upon Procedures (a)	Title (b)	Hourly Rate (c)	Hours (d)

**Year 3 Renewal - Mega Millions Agreed-Upon Procedures Cost Proposal (RFP Part 7)**

Total Professional Fee including all direct and indirect costs for Year 3 Renewal only \$_____

Directions: - Complete all boxes below for each project position assigned to the Mega Millions Agreed-Upon Procedures. Actual names to be provided upon renewal of contract by the Texas Lottery.

List of Project Positions & the services they will perform under the Mega Millions Agreed-Upon Procedures		Total Hours for all Project Positions: _____	
Mega Millions Agreed Upon Procedures (a)	Title (b)	Hourly Rate (c)	Hours (d)

(signature of person authorized to contractually bind the Proposer)_____
(printed name)_____
(title)_____
(date)